THE CHILD MARRIAGE RESTRAINT BILL.

MR. E. SUBRAMONIA IYER (*Nominated*): Sir, I have explained in some detail the serious consequences which might ensue if the amendments suggested were accepted. I may also draw the attention of the House to the inconsistency, or rather the effect this suggested amendment may have not only upon this Act but also upon the community. Now the clause stands like this:—

> "No court shall take cognizance of any offence under this Regulation save upon complaint made within 6 months etc- etc."

But in clause 9 which is a consequential clause to clause 8, it is stated as follows :—

> "The court taking cognizance of an offence under this Regulation shall unless it dismisses the complaint under Section 181 of the Code of Criminal Procedure either itself make an enquiry under Section 180 of that Code, or direct a Magistrate of the I class subordinate to it to make such an enquiry."

If the court can take cognizance of the case upon information as stated in clause 8 so far as clause 9 is concerned, the effect of its operation is taken away.

Then coming to clause 10 which is as follows :

> "At any time after examining the complaint and before issuing process for compelling the attendance of the accused, the court may, for reasons to be recorded in writing, require the complainant to execute a bond, with or without sureties, for a sum not exceeding one hundred rupees, as security for the payment of any compensation which the complainant may be directed to pay under Section 227 of the Code of Criminal Procedure and if such security is not furnished within such reasonable time as the court may fix, the complaint shall be dismissed."

So practically the operation of clause 10 also is taken away. If a court is to take cognizance of a case even without a complaint, I may point out that there is absolutely no necessity for any of these provisions because under the ordinary law, as contained in the Criminal Procedure Code, a Magistrate can take cognizance of a case upon a complaint or upon a Police Report like cases for the Abkari or Forest offences. If it happens to be the Magistrate of the I Class he can take cognizance of the case upon information received from an individual. The information laid before a Magistrate should be certainly laid by an individual according to the definition of the complaint contained in the Criminal Procedure Code, a complaint in writing or an oral complaint made before a Magistrate. So it is not necessary that the complaint should be in writing. Oral complaint is also a complaint made before a Magistrate. Then how is it different from the ordinary complaint unless the person who gave the information is not willing to come forward as the complainant. He wants to hide behind the screen in this case. So it is stated in this act that the only court competent to take cognizance of an offence under this Bill is a Magistrate of the I class including a District Magistrate.

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It is laid down in the Criminal Procedure Code that the Magistrate can take cognizance either upon a complaint or upon a police report. There is absolutely no necessity for clause 8 to be amended. In my view the best thing would be to delete clause 8.

Clause 9 is unnecessary because there is a provision in the Criminal Procedure Code that whenever a Magistrate takes cognizance of a complaint if he distrusts the truth of the complaint he may dismiss the case and direct an enquiry be conducted by a subordinate. Now that clause also is not necessary. It is enough if the Criminal Procedure Code is followed in this respect. Now coming to clause 10 it is stated that in cases where complaints have been found to be frivolous or vexatious the court may direct compensation to be given to the accused by the person who have instituted, or brought that complaint. Even in other cases the person who set the law in motion even though he actually preferred the complaint he may be called upon by the Magistrate to bear compensation. The idea behind the introduction of this amendment seems to be that the information may be given by anybody to the Magistrate and the person giving the information may hide behind the screen and he may never be called upon to account for if the complain was frivolous and vexatious. Those safeguards which were originally intended by the Bill to prevent vexatious and frivolous complaints are practically taken away by this amendment. So after all the only reason assigned in bringing this amendment is that Legislatures elsewhere thought this amendment was necessary. Sir, there is a small proverb in Malayalam (ആപ്പുകെട്ടിയാൽ മുപ്പിരിക്കും) *i. e.*, if a thing is joined to another somehow or other it will bulge out. Certainly apart from the merits of the Legislation we are expected to see to the best of our ability that the form of a bill should be as compact and as symmetrical and as beautiful as it could be, because beauty is a quality which is not incongruous with any production even though it be a legislative production. Certainly amendments shall come in if they are really required. When you introduce a piece of legislation you want to see and perceive not only the mere wording of it or the construction of it but its implication and its consistency with the general law of procedure. The amendment has not touched any substantive portion of the Bill It does not affect the legislative intentions of the bill. The intention is there that who ever commits or contributes to child marriage must be subjected to the provisions of the Penal Code. It regulates only the procedure and circumstances under which a prosecution can be launched. When you do that I don't think that there is any necessity to disturb the symmetry and the sense and the consistency of the Bill by introducing an amendment. Moreover, this amendment is not at all in consonance with the scheme of the Criminal Procedure Code. With these words I appeal to the House to reject the amendment.

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MR. P. S. NILAKANTA AIYAR (*Nominated*): Sir, in regard to amendments 9 and 10, I may submit that one is by the mover of the bill. The amendment is as follows: —

> "The court may take cognizance of an offence under this Regulation, either upon complaint made, or information laid before it, within one year from the date on which the offence is alleged to have been committed."

The second amendment is by Mr. E. Subramonia Aiyar which is as follows:—

> "In clause 8, after the words "save upon complaint made" and before "within six months" insert the words "by not less than five members of the community to which the parties to the marriage belong."

Let us take the first amendment. Apart from the complaint made, an information laid before a court of law is as sufficient for the court to take cognizance of a case as a complaint made. This amendment is a copy of the amendment introduced in the Indian Legislative Assembly upon the original Bill introduced by Mr. Sarda. It seems to me in the first place that it will be a slavish mentality to initiate whatever is being done in British India irrespective of the fact how far it is suited to the local conditions here and how far it can be justified on the merits thereof. Wherever there is a difference between the law in British India and the English common law

[At this time the Deputy President occupied the Chair.]

there are a number of instances where we have followed the English common law to the British Indian law. In contracts, for instances, there is a difference as to the time when a contract is complete, *viz.*, whether it is when the offer is accepted or whether it is when the communication of the acceptance reaches the offerer. Similarly, with regard to the law of evidence, there are instances in which there is such difference and we have preferred to follow the English Law. I wanted to suggest that there are cases and instances in which we have thought that the British Law on the point does not suit the conditions obtaining here. It is open to us to decide, having regard to local conditions, which law, one should accept. In British India, it was thought that, necessary safeguards should be made before criminal proceedings are initiated. That is why the provision of a deposit by way of security is mentioned as a condition precedent to the initiation of proceedings. This is not a new provision. In the ordinary Criminal Procedure Code, there are Sections namely 170 to 175, which provide that the mere fact that an offence has been committed will not entitle a court of law to take cognizance of the offence. A complaint from private parties, sanction from Government or a Court of Laws, etc., are conditions that may precede in order that a court may take cognizance of an offence. Two of the sections may be referred to in the Criminal Procedure Code which refer to this aspect of the law. In Part VI, Chapter XV which deals with the jurisdiction of the criminal courts in inquiries and trials, we find eight sections grouped under the heading "Conditions requisite for initiation of proceedings". Why was this introduced in the Criminal Procedure Code? The fact is that the commission of an offence alone should not be made the occasion for the courts to take

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proceedings against a person. With regard to a number of offences both under the Penal Code and under other Criminal Laws, some preliminaries were made a condition precedent. For instance Section 173 prescribes the preliminary conditions that ought to be fulfilled before prosecution is launched in respect of offences such as contempts of lawful authority of public servants, offences against public justice, offences relating to documents given in evidence and defamation in respect of anything said or done in the Sri Mulam Popular Assembly by the members thereof. The first part namely, Section 173 (*a*) reads thus:

> "No court shall take cognizance of any offence punishable under Sections 165 to 181 (both inclusive) of the Penal Code, except with the previous sanction, or on the complaint, of the public servant concerned, or of some public servant to whom he is subordinate".

Section 173 (*b*) says:

> "No court shall take cognizance of any offence punishable under Sections 187, 188 190, 193, 194, 200, 201, 202, 203, 204, 205, 206 or 226 of the same Code, when such offence is committed in, or in relation to any proceedings in any court except with the previous sanction, or on the complaint, of such court, or of some other court to which such court is subordinate".

This is the paragraph which deals with offence against public justice.

Then again, regarding documents given in evidence, the Section 173 (*b*) lays down:

> "No court shall take cognizance of any offence described in Section 465, or punishable under Sections 473, 377 or 478 of the same Code, when such offence has been committed by a party to any proceedings in any court in respect of a document produced or given in evidence in such proceeding except with the previous sanction, or on the complaint of such court, or of some other court to which such court is subordinate."

Sir, in offences relating to defamation, in respect of anything said or done in the Sri Mulam Assembly by the members thereof, also sanction of the Government in writing was necessary to launch a case. For Section 173 (*d*) says:

> "No court shall take cognizance of any offence described in Section 503 of the same Code when such offence has been committed by a member of the Sri Mulam Popular Assembly, for anything said or done in the Assembly, unless upon complaint made by order of, or under authority from, Our Government, or with the previous sanction in writing of Our Government".

I refer to these groups of sections to show that it is not merely the violation of any right or any section in the Penal Code which will enable a court of law to proceed against the delinquent, but certain conditions are fixed as preliminaries to the prosecution. There must be some aggrieved party; or probably a preliminary enquiry has to be made to know whether justice required that the offender should be proceeded against. The mistake or the act committed must be a wanton violation of the law. A court may not take cognizance of it if it is found on enquiry that there is no need for a prosecution. That is why those safeguards have been introduced in the Criminal Procedure Code.

Sir, coming to the sanctions, the nature of the sanctions is also prescribed. It is not everybody who could initiate a prosecution. On the other hand, our Bill, here gives the right to any member of the

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public to institute a complaint. That is a very wide provision. When prosecution for offences against the State is considered the law definitely says that (Section 174):

> "No court shall take cognizance of any offence punishable under Chapter VI of the Penal Code (except Section 120), or punishable under Sections 145 A, 164, 182 293 or 508 of the same Code, unless upon complaint made by order of, or under authority from, Our Government".

The State is directly affected in certain offences. The breach of the peace is expected; different communities begin to war against each other. It is therefore for the Government to see what effect it has produced or it is likely to produce before sanction for prosecution is given. The State is the body that is directly affected and it is for the State to see whether proceeding is necessary. So, here before sanction is given, Government have to weigh all these. We have come across a number of cases where the law has been violated; in many of these cases we know that Government have not given sanction to proceed against the offenders. They have to see what the effect of the prosecution, if launched once, will be, whether the peace of the country will be affected or whether any turmoil will follow the prosecution. Therefore, sanction is given only after these aspects are fully considered. Now, these are the safeguards even with regard to the ordinary offences which come under the Penal Code.

As regards the prosecution of public servants, the law is clear in providing certain conditions which should precede prosecution. Section 175 of the Code specifies:

> "When any public servant not removable from his office without the sanction of Our Government, is accused as such public servant of any offence, no court shall take cognizance of such offence, except with the previous sanction of Our Government".

In this case, a further procedure, as to the person who shall conduct the prosecution, or the manner in which it shall be conducted, is also given.

Again, in prosecution for breach of contract, defamation and offences against marriage, it is not any person who can institute a complaint. The Section lays down that only the person who is aggrieved by such offence shall set the law in motion. Section 176 reads:

> "No court shall take cognizance of an offence falling under Chapter XIX or Chapter XXI of the Penal Code or under Sections 496 to 499 (both inclusive) of the same Code, or of any offence compoundable without the permission of the court under Section 256 except upon a complaint made by some person aggrieved by such offence.

Thus, only the person who is directly affected by the offence will be able to institute a complaint. Even though the court sees actually the offence being committed before it, it cannot take cognizance of the matter on its own initiative.

Lastly, I refer to the section which safeguards against undue prosecutions for adultery, bigamy or enticing a married woman (Section 177):

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"No court shall take cognizance of an offence under Section 500 or Section 501 of the Penal Code except upon a complaint made by the husband of the woman, or, in his absence, by some person who had care of such woman on his behalf at the time when such offence was committed".

Sir, I refer to these sections in detail to show that even ordinary offences, offences in the Penal Code, cannot be the subject matter of a case unless some authority, is given or a party who is aggrieved, lodges a complaint or the court makes an enquiry or does some such preliminaries before the prosecution.

As regards this Bill, the offences created in this Bill required a complaint to be filed. But the first question is who is the person affected by the offence so that a complaint may be lodged by him. Probably, it would be rather difficult to prove that a person is aggrieved by a marriage between two other strangers. No relation, probably, may be coming in as the complainant. One can expect only strangers to come in and file a suit. That is the reason why the framers of this Bill gave the power to lodge a complaint to any person whether he is really aggrieved by the marriage or not. If there is not a responsible person coming forward to prefer a complaint how can the security needed be deposited. If the prosecution appears weak and if the security is not deposited the law will be clearly infringed. What we enact should not be a dead letter. Now, Sir, I oppose this amendment to set at naught this effect, arising out of the provision.

As regards the information, it may be probably instructive to know the corresponding provision in the Criminal Procedure Code as regards initiation of proceedings for prosecution on receipt of information under Section 117 of the Criminal Procedure Code. Any prosecution under Section 117 of the Criminal Procedure Code cannot be started directly by the Magistrate on his own motion because there are certain ways under which alone a prosecution can begin. One such is that a complaint should be preferred by a party; another is that a police report or a charge sheet must be made by the police. A third, which was introduced when the Excise Department was introduced, is the report of the Abkari authorities regarding offences under Abkari Regulation. The last point is as regards the First Class Magistrates or the Second Class Magistrates who have special powers to do so. There also discretion is given to select the Magistrate. They also may take cognizance of the case upon information received from any person other than a police officer. But here Sir, the wording is a little different. The amendment before the House reads different. In the Criminal Procedure Code, the ordinary law of the land, it is information received from any person other than a police officer. Therefore, the Criminal Procedure Code would insist that the information must be from a specific person other than a police officer. In this amendment it is information laid. So the Magistrate is not bound to say from where he got the information. It is not necessary, at any rate. The Regulation does not say whether the information should be in writing or should be

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signed by the informant. As regards ordinary cases, the first information report, is generally taken by the police signed as a statement given by the complainant. There is therefore in that case some responsible person who specifically comes forward and says there is an instance in which the law has been violated'. He would then probably be the important witness in the case, P. W. 1. He will be also able to speak either directly to the offence or to special important circumstances in the case. Thus, in the ordinary law there is some such substantial basis on which the court could proceed. But in the amendment now proposed there is no such specific and responsible person. Nor is it specifically mentioned that the information should be taken in writing or signed by the person.

Then again, when we look to other sections of the Bill, Section 10, for instance, gives the court after examining the complaint and before passing an order for attendance of the accused, a discretion to ask the complainant to execute a bond, with or without sureties for any amount not exceeding Rs. 100 towards payment of compensation. Well, what should we do with cases where the source of the information is not known? Who is to give the security then? Even though prosecution has been started it might be that the case is one in which some security has to be taken. The prosecution may be so weak.

There is provision also for obtaining an injunction to restrain a child marriage when it is about to be solemnised. What will be the result, I ask, if a marriage is stopped at the eleventh hour? It cannot be denied that there are, in society persons who are mischievously inclined. There may be some body who bears a grudge against one or other of the parties to the marriage: and merely to insult the family, he may move the court and obtain an injunction to restrain the marriage. In such a case, the party will have no option but to stop the marriage. It may ultimately turn out that it was not a child marriage at all and that the complaint was entirely without foundation. Now, in such a case, what will be the extent of the loss to the parties to the marriage, the damage done to them? And, after all it may so happen that even the damages, which is all the court can award in such cases, may not be easily recoverable from the complainant.

Then again, under paragraph 2 of Section 170 of the Criminal Procedure Code, there is provision for the transfer of cases from one Magistrate to another. It seems to me highly doubtful whether, in regard to the offences under this Bill, that provision of the Criminal Procedure Code will apply. It may be argued that this is a special law and therefore the provisions of the Criminal Procedure Code would not apply to it excepting in so far as it has been specifically provided for in it. Surely the position is not free from doubt. Further, the provision in the Criminal Procedure Code only enables a party to apply for transfer of cases from one Magistrate to another; and the power to grant such transfer is vested in the High Court or in the District Magistrate; the party is not given the right to demand that a case should be transferred. In the case of a prosecution started on information a right has been created under the Criminal Procedure Code

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in favour of a party to get his case transferred; no option is given to the Magistrate; the case *has* to be transferred. There is no corresponding provision in the Bill. I doubt very much the wisdom of the provision of starting prosecutions on information.

Sir, the importance of this provision can be appreciated if it is realised that the right to institute a complaint is given to all and sundry, even to persons who have absolutely no interest in the parties to the marriage. Anybody in the neighbourhood, strangers even to the community to which the parties to the marriage belong, are given this right; and, especially in these days of communal tension, this provision will be taken advantage of, and frivolous complaints may be lodged against honest, innocent and self-respecting citizens. The representatives of the community most affected by this measure have declared emphatically in unequivocal terms that this Bill is unnecessary; and now here is a provision giving the rights even to strangers to the community to complain to the Magistrate. Certainly, this provision is likely to be misused.

Incidentally, this provision takes me to the amendment in the name of Mr. E. Subramonia Aiyar which states that a complaint can be preferred only by not less than five persons of the community to which the *parties* to the marriage belong.

MR. M. SIVATHANU PILLAI: Are we concerned now with that amendment which we are going to take up afterwards?

DEPUTY PRESIDENT: A passing reference can be made to that amendment also.

MR. P. S. NILAKANTA AIYAR: Although that amendment is numbered separately, it relates to the same Section; the subject matter is the same.

MR. C. JEBAMONY NADAR: It may happen that the subsequent amendment is not moved at all.

MR. P. S. NILAKANTA AIYAR: I take it that amendment also has been moved.

MR. M. SIVATHANU PILLAI: No, it has not been moved.

MR. C. JEBAMONY NADAR: Mr. E. Subramonia Aiyar spoke upon it without moving it.

MR. P. S. NILAKANTA AIYAR: I would like to know from the Chair whether I am to confine my remarks to the first amendment alone.

DEPUTY PRESIDENT: So far as I am able to gather, Mr. Subramonia Aiyar has not moved his amendment; he only referred to it in the course of his argument.

MR. E. SUBRAMONIA AIYAR: A word of personal explanation, Sir. So far as the amendment is concerned, if the portion "or information laid before it" is accepted by the House, certainly, there will be no point in my moving my amendment which is a qualification of the word

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"complaint" contained in the Bill. The amendment that we are now discussing is that the court may take cognisance of a matter on complaint or information received. I brought to the notice of the House that my amendment also has got a considerable bearing upon the matter in issue, and I adduced that as one of my arguments for stoutly opposing this amendment, because if this amendment is accepted in toto my amendment goes.

DEPUTY PRESIDENT: Your amendment was not moved?

MR. E. SUBRAMONIA AIYAR: No, it was not moved.

MR. P. S. NILAKANTA AIYAR: Now that the position has been made clear, I shall confine my remarks to the first amendment.

For a prosecution to be started, a complaint is necessary; and I submit that the power to institute a complaint should be restricted in the way suggested by the latter amendment which we are going to take up later on. I lay emphasis upon the idea of the latter amendment, because at least the complainants would belong to the same community as that of the parties to the marriage; they need not fear any mischief from strangers to the community. I shall illustrate my position. Suppose there is a marriage performed in the community to which I belong, the Brahmin community. I do not think anybody would go to the extent of asserting that there is not even a single Brahmin who has got these so-called advanced views; certainly, there are some Brahmins who believe, rightly or wrongly, that child marriage is bad in fact they insist on post puberty marriage of their girls. There are also others in the Brahmin community who, though they may not abhor pre-puberty marriage as something repugnant, actually marry their girls only after they attain puberty, solely due to economic reasons; because even a person of average means has to pay a substantial amount in the shape of dowry. There are not many Brahmins who can afford it. No doubt the bulk of the Brahmin community have the feeling ingrained in them that, even apart from the opprobrium of the neighbours belonging to the community, they would be committing a great sin by violating the Sastras if they give away their girls in marriage after they attain puberty. There may also be cases of very old men who want to see their grandchildren married during their life time itself. There may be a very desirable boy, but the girl may be only nine: all the same the old grand-father might like to see the girl married to that boy even during his life time; because, after his death all his money might be taken away by persons who are interested in his money alone, and no one might think of this happy alliance.

MR. M. SIVATHANU PILLAI: The honourable member is repeating arguments which have been already advanced. All these aspects have been discussed thread-bare when the question of the age was discussed.

DEPUTY PRESIDENT: The chair will intervene when necessary.

MR. P. S. NILAKANTA AIYAR: Who are the persons likely to institute a complaint, what is the feeling of the members of the various communities, these points I submit are quite relevant to the present discussion.

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DEPUTY PRESIDENT: You may proceed.

MR. P. S. NILAKANTA AIYAR: As I said, Sir, even among the Brahmins there are some who are definitely of the opinion that girls should be given over in marriage only after they attain fourteen years of age not only they are of the view, they also want the rest to follow their lead. It cannot be said that there is nobody in the Brahmin community who holds that view. Even in the Brahmin community there are some such people; but in the other communities, probably there may be many to hold that opinion.

MR. M. SIVATHANU PILLAI: I question that statement.

MR. P. S. NILAKANTA AIYAR: My submission is that, besides those honest persons who hold the so-called advanced view, there may also be others who are mischievously inclined. Certainly, they should be checked. Such false complaints are perfectly possible and the law should provide not only for probabilities but also for all possibilities. Especially in these days, it is not unlikely that, against the parties to a marriage in a Brahmin house, mischievously inclined members of other communities may prefer false complaints, merely to harass the parties to the marriage.

MR. PUTHUPALLI S. KRISHNA PILLAI: Is it the opinion of the Honourable Member that the Brahmin community cannot boast of such individuals who are inclined to prefer unfounded complaints against members of other communities merely for the purpose of harassing them?

MR. P. S. NILAKANTA AIYAR: I say that, in the present state of communal discord, it is more likely for members of the other communities to take advantage of these provisions and to harass the members of the Brahmin community, who are most affected by this legislation. I am at probabilities and not possibilities.

MR. PUTHUPALLI S. KRISHNA PILLAI: Cannot a member of the Brahmin community prefer a complaint against a marriage performed by members of some other community?

MR. P. S. NILAKANTA AIYAR: I was only giving one instance; I did not give an exhaustive list of the communities the members of which might prefer such complaints. Any how, pre-puberty marriages are more common in the Brahmin community than in other communities, so that complaints under this Bill are likely to be more common against the Brahmin community than against any other community.

MR. PUTHUPALLI S. KRISHNA PILLAI: Are there not an equally large number of marriages in other communities as well which may be taken advantage of by members of the Brahmin community for purposes of unfounded prosecutions?

MR. P. S. NILAKANTA AIYAR: I am not sure whether there would be an equal number of pre-puberty marriages in the other communities as you find in the Brahmin community; I thought we were all agreed on that point.

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MR. PUTHUPALLI S. KRISHNA PILLAI : I am asking whether, in the matter of unnecessary or frivolous prosecution, equal opportunity is not available to the Brahmins as it is to the Nayar, the Christian or the Mahommedan ?

MR P. S. NILAKANTA AIYAR : At any rate my own view is that there are more pre-puberty marriages in the Brahmin community than in any other community so that the chances for prosecution under this Bill—therefore for frivolous and mischievous prosecutions also—are mostly against the Brahmin than against any other community. In the case of Mahommedans and some sections of the Christians, it is left to their option to perform post-puberty marriage as well. But in the case of Brahmins, we are compelled under the sastras to give our girls away in marriage before they attain puberty. I do not think there is this kind of compulsion in the case of any other community.

MR. E. SUBRAMONIA AIYAR : May I know from the Honourable member what, according to him, is the object of the mover of this Bill in bringing forward this piece of legislation ? Is it to make persons who contravene these provisions criminals of a particular type, or is it to educate the communities concerned, to bring them to their senses, to make them realise the evils of child marriage ?

MR. P. S. NILAKANTA AIYAR : The object, it seems to me is the former one. Sir, this is only acceding to the wishes of social reformers in the country who want to hasten the pace of reform by means of legislation. They are not satisfied unless the post puberty marriage comes to this community also and monopolised it by penalising existing prepuberty marriage. Their object seems to be to drive a coach and four over the sentiments of the community which wants to follow the sastras, and to change by legislation recognised principles long acted upon on the basis of the sastras. As I said, this is not an enabling piece of legislation. It is a penalising statute. It does not simply say if you perform post-puberty marriages we will recognise them and there shall be no opprobrium attached to such marriages. On the other hand the object of the legislation is to punish and send a few people to jail because they think on account of their religious convictions they have to marry their daughters before they attain puberty.

With regard to the court acting upon information I expected that the mover of this amendment would explain how this information has to be laid before the court. Whether a definite person has to take the responsibility for the facts and whether he knows the facts directly, indirectly or only by hearsay. It is a well known fact that in a court of law hearsay evidence could not be admitted. Still the mover of the amendment wants the court to take action on mere information laid before it. It may be an unauthorised newspaper report for which nobody is responsible. Even in cases where the court cannot accept hearsay evidence, the mover of the amendment wants the court to act and start prosecutions on it That seems to me to go against the fundamentals of the law of evidence. But here hearsay evidence can

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be accepted and if some person comes and says he heard that such and such a child marriage, tookplace, the mover wants the court to take action.

MR. M. SIVATHANU PILLAI: May I know from the member, whether a court taking cognizance of a case necessarily means the starting of a prosecution?

MR. P. S. NILAKANTA AIYAR: As I have understood it, the court takes cognizance of a case only to start a prosecution. Mr. Sivathanu Pillai suggests that there are other ways of how a court can take cognizance of an offence without a prosecution, I am not aware of such ways.

MR. M. SIVATHANU PILLAI: When a person gives information before the court, can not the court ask the informer to swear and then proceed with the case if it is absolutely necessary?

MR. P. S. NILAKANTA AIYAR: That presumes that there is an informer. Even if there is an informer, if he goes to the court and swears, that amounts to starting a prosecution. But what about action taken on newspaper reports etc. The prosecution does not necessarily commence after a charge is framed. It is only in summons cases that a charge is framed in the first instance.

MR. M. SIVATHANU PILLAI: I do not mean trial Could not the court make an enquiry in regard to information placed before it by a person? For instance the court may ask the informer to make the statement on oath before it proceeds further.

MR. P. S. NILAKANTA AIYAR: I thought there was no room for any doubt One is upon complaint and the other is upon information laid before the court.

(At this stage the Deputy President left the Hall and Mr. E. Subramonia Aiyar took the Chair.)

That is the distinction. I thought that the departure from the language of Section 170 of the Criminal Procedure Code was with a distinct purpose. I thought from the ordinary meaning of the amendment, information laid means information laid from whatever source it might be. It may be hearsay or even a newspaper report in the course of which the matter is disclosed. That is how I took it. I think I would be justified in making this inference because of the difference in the language used in the amendment and the language used in the Criminal Procedure Code. Under the latter the information should be from a definite person. But here it is not necessary that a definite person should give it. It is enough that information is laid before the court; the source of it may or may not be divulged. The source may be privileged as in the case of a police officer who is not bound to disclose the source of his information. It seems to me therefore that there is a lot of material on which the Magistrate can proceed without the safeguard of any person vouching for the accuracy of the information. Then my friend Mr. Sivathanu Pillai asked whether the person giving the information could not be examined

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before the prosecution is started. I think that may not be necessary. In the case of a valid complaint in a criminal case, the examination of the complainant immediately after the complaint is made is a necessary safeguard. Otherwise nothing could take place, not even summons to the accused could be issued. Then only the case is taken in his calendar file by the Magistrate. My friend Mr. Sivathanu Pillai again preferred to an enquiry being made before the institution of the prosecution. It seems to me that on a reading of the section which is now sought to be amended it is not stated whether a preliminary enquiry is necessary. My friend stated that if the Magistrate entertains any doubt he might make enquiries. In the first place there is no compulsion upon the Magistrate to do any such thing at all. Secondly, the enquiry which my friend has in view is something analogous to what a Magistrate can do under Section 181 which enables him to dismiss a complaint if after examining the complainant he finds that there is not sufficient ground for proceeding with the complaint. Probably that is what my friend has in view when he stated that an enquiry may be made by the Magistrate before the actual prosecution starts. I think that is not possible. Because the enquiry contemplated under Section 181 arises only after examining the complainant and the result of any investigation. Here it is not possible, because the present bill does not authorise any person other than First Class Magistrates to take cognizance of the offence. It could not be sent to the Police for report as in the case of offences contemplated by Section 181. These are the two facts upon which the Magistrate is authorised to dismiss the complaint if there is no sufficient ground for proceeding after examining the complainant and the result of investigation. Of these two things, the latter is denied in the case of offences contemplated by the present Bill. I therefore fail to see any necessity for this amendment, now that all First Class Magistrates are empowered to try such cases. Thus the enquiry is not available to these Magistrates as my friend thought. That is, the institution of an enquiry is not available before the prosecution is instituted. The only other thing is the examination of the informer so that the prosecution begins straightway. The most important safeguard which the law provided originally is taken away when we say that the Magistrate can act on information. Something definite and substantial on which the Court is empowered to proceed and which is also a guarantee against frivolous prosecution has been removed by this amendment. I therefore oppose the amendment.

MR. E. SUBRAMONIA AIYAR : As per the amendment does information laid relate to the same category as complaint as is suggested by some of the honourable members ? Is that the meaning intended by the mover of the words "information laid"? I should like to have it made clear. If it means on the statement made by a person before the Magistrate that to his knowledge a certain child marriage has been performed, probably the line of discussion may take a different form. So I should like to have some clearness upon the matter. Let us not be groping in the dark.

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MR. PUTHUPALLI S. KRISHNA PILLAI: On a point of order, Sir. Is it a question that the honourable member puts or is the honorable member making a statement?

MR. E. SUBRAMONIA AIYAR: I am making a request to the Chair. As an honourable member of the House I may place my difficulties before the Chair so that there may be a clarification. So far as the discussion goes, I should like to know whether according to the mover or the Legal Remembrancer or any other honourable member of this house we are to take it that 'information laid' means information given by a person appearing before the Magistrate's Court and laying information or whether according to the amendment complaint is one category and information laid is some other category. As I understood it, I took it to be information received by the Magistrate from sources which he is not bound to disclose. That is how it is understood in the Criminal Procedure Code I should like to have that matter clarified at least by the Legal Remembrancer.

MR. PUTHUPALLI S. KRISHNA PILLAI: The honourable member Mr. P. S. Nilakanta Aiyar is now in possession of the House.

DEPUTY PRESIDENT: Let him finish.

MR. P. S. NILAKANTA AIYAR: I thought there was no room for any doubt. One is upon complaint and the other is upon information laid before the court.

(At this stage the Deputy President left the Hall and Mr. E. Subramonia Aiyar took the Chair.)

That is the distinction. I thought that the departure from the language of Section 117 of the Criminal Procedure Code was with a distinct purpose. I thought from the ordinary meaning of the amendment, information laid means information laid from whatever source it might be. It may be hearsay or even a newspaper report in the course of which the matter is disclosed. That is how I took it. I think I would be justified in making this inference because of the difference in the language used in the amendment and the language used in the Criminal Procedure Code. Under the latter the information should be from a definite person. But there it is not necessary that a definite person should give it. It is enough that information is laid before the court but the source of it may be divulged or not. The source may be privileged as in the case of a Police officer who is not bound to disclose the source of his information It seems to me therefore that there is a lot of material on which the Magistrate can proceed without the safeguard of any person vouching for the accuracy of the information. Then my friend Mr. Sivathanu Pillai asked whether the person giving the information would not be examined before prosecution is started. I think that is not necessary. In the case of a valid complaint in a criminal case, the examination of the complainant immediately after the complaint is made is a necessary safeguard. Otherwise nothing could take place, not even summons to the accused could be issued. Then only the case is taken on to the calender by the Magistrate. My friend Mr. Sivathanu Pillai again referred to an enquiry

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MR. C. JEBAMONY NADAR: Sir, I support the amendment. The amendment prescribes a period within which the complaint has to be filed and also he manner in which it has to be filed. So far as the period is concerned, I think those who oppose the Bill must thank the mover of the amendment rather than find fault with him For, so far as crimes are concerned, once a crime is committed it is a crime for ever. Even according to the penal code limitation is a matter of exception rather than of the rule. For offences committed, mostly there is no time limit within which the complaint could be filed. But here I find that as a matter of favour a period is fixed so that beyond that period no complaint can be filed. So this is a matter which should satisfy those who oppose the Bill.

MR. P. S. NILAKANTA AIYAR: Is the member aware that lesser periods of one month and three months are prescribed in the criminal procedure code?

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CHAIRMAN: Under the limitation regulation.

MR. C. JEBAMONY NADAR: Yes.

MR. P. S. NILAKANTA AIYAR: So that it is not a question of favour.

MR. C. JEBAMONY NADAR: If it is a question of no time certainly a time limit is a favour. When in the case of other offences the complaint can be filed even after a hundred years, here a time limit is prescribed. If a person is able to keep the child marriage undisclosed for one year then he is safe.

MR. P. S. NILAKANTA AIYAR: If the honourable member thinks that the prosecution may be instituted even after one year, may I know why he did not bring in an amendment to increase the period?

MR. C. JEBAMONY NADAR: If the honourable member himself brought such an amendment as he suggests I would certainly have supported it. So, I leave it to the honourable member rather than to myself.

In regard to the filing of complaints, we have similar provisions in the Criminal Procedure Code.

MR. N. RAMAKRISHNA PILLAI: May I know whether in the opinion of the honourable member it will not be better for the prosecution to follow soon after the marriage instead of waiting for some time?

MR. C. JEBAMONY NADAR: Yes Sir, But there are people who are intelligent enough to hide facts so that even their neighbours may not know about it for months together.

MR. M. SIVATHANU PILLAI: Then, in that case, is it the member's view that time should be allowed for prosecution?

MR. C. JEBAMONY NADAR: My point is that none should be allowed to defeat the provisions of law. It is only when the public comes to know of the matter, information could be had for putting in a complaint.

MR. P. S. NILAKANTA AIYAR: Is the Member aware that unless a prosecution is started immediately it is very difficult to get evidence in regard to the complaint? Will it not be hard on the accused if the time-limit is extended?

MR. C. JEBAMONY NADAR: Time cannot affect a case like this, for, so long as the married couple are together, the very fact that they live together is sufficient evidence. If they are separated, then you can say that there is difficulty. But in that case the object of this legislation is achieved at least partly. My position with regard to the matter is this: The Code of Criminal Procedure is in existence not only in British India but in other Indian States as well. In all those places complaints are taken cognisance of by a First Class Magistrate. He is entitled to do so even on information. There are sufficient safeguards in law to see that nobody is accused unnecessarily. If the court finds that the complaint is a vexatious one, compensation is awarded to the accused. This state of law has been found to be satisfactory during the past, not only here but in other countries as well. What

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then is the need for additional safeguards in this particular matter? Take again the civil side. Any individual may file any suit against anyone if he is so inclined. For instance, if somebody files a suit for a lakh of rupees basing his claim on deliberate falsehood what law can prevent him from so doing?

MR. P. S. NILAKANTA AIYAR: In order to file a suit of that nature, is the member aware that a huge amount is necessary for payment as court fees?

MR. C. JEBAMONY NADAR: Yes Sir. I am also aware of suits being filed in forma pauperis. As I understand the honourable members who are against the amendment, they want further, that some qualification should be prescribed for the complainant. We know as a matter of fact that it is not the qualification of the complainant that counts but it is the merit of the complaint. Suppose we prescribe the qualification that the complainant should be a Brahmin. Difficulties would arise. Next day the accused might come before the court and contend "that the Brahmin in the section means a Brahmin belonging to the subject to which I belong, the complainant's sect can have no intermarriage with mine and that he does not belong to the section to which I belong and therefore this complainant has no locus standi and let therefore the complaint be dismissed". It is a question of fact which the learned Magistrate could decide only on evidence and may have to divert his attention to this side issue which may develop into an elaborate enquiry ranging over a long period. The main question must lie over all this while. Therefore, my point is that so far as the complainant is concerned no qualification need be prescribed.

MR. P. S. NILAKANTA AIYAR: Is the member aware that the amendment does not suggest any qualification being prescribed for the complainant, but only about the complaint itself?

MR. C. JEBAMONY NADAR: I have in view amendment No. 10 which requires 5 members of the community to figure as complainants

Now I would proceed to another part of the amendment *i. e.* court starting enquiry on information. It may be in the nature of a Police report or from other reliable sources. We find a similar provision in the Cr. P. C. There might occur cases in which the offenders might be clever enough to win over probable complainants. This possibili y of evading law is avoided when courts are authorised to act on information in appropriate cases. Legislation must take note of even the remotest possibilities. With due deference to the honourable members of this House who oppose the amendment, I think this part o the amendment has also to be retained and that there is no room for anxiety.

MR. E. SUBRAMONIA AIYAR: May I ask the honourable member whether a complaint is absolutely necessary for instituting a prosecution and that under the Criminal Procedure Code whether it is not a fact that a Magistrate of First class is allowed to take cognisance of particular cases only?

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MR. C. JEBAMONY NADAR : It being true that complaints are necessary in a few class of cases the power of the first class Magistrate to take cognisance on information extends to cases other than these. If the law demands complaints in certain cases and not in others it is based on certain principles. If the act complained of affects individuals only as distinguished from society, then the right of complaining is limited to individuals. In offences against society at large any one may come forward either as a regular complainant or may convey the information to the authorities even in an informal way. Herein comes the need for acting on information. Now what is the principle involved in this Bill? One section of society wants to perform child marriage. There is the other section which says that it should be forbidden. So when the act prohibited in the Bill is committed the people who are really aggrieved are those who are against child marriage. They form the majority of the public. So the right of complaining must vest in the public at large. Hence any information in any form must be deemed sufficient. I think that this must be the correct view, because the effect of passing this bill would be that this practice however immemorial it might be is injurious to the present society.

Another aspect of the matter in Mr. Subramonia Iyer's speech is his personal and sentimental appeal to the house. Hence I regard it a misfortune to differ from his views.

MR. P. S. NILAKANTA AIYAR : May I know from the member from which part of Mr. Subramonia Aiyer's speech he inferred that it was one of sentiment?

MR. C. JEBAMONY NADAR : When I said speech I did not confine myself to a part of his speech. I listened to his whole speech and came to the conclusion that it contained more of sentiment than of legal elucidation.

MR. E. SUBRAMONIA AIYAR : Is it not a fact that if a piece of social legislation were enacted it should be representative of various interests and in the interest of the community?

MR. C. JEBAMONY NADAR : Ordinarily that is the correct position. But my own view of the matter under debate is that it is neither communal nor merely social.

MR. E. SUBRAMONIA AIYAR : Is it the member's suggestion that when a legislation is proposed to be passed as a law, safeguard should be provided to protect the interests of certain communities who are in a minority?

MR. C. JEBAMONY NADAR : Yes, Sir. Under ordinary circumstances where a legislation is passed, every protection should be afforded to safeguard the interests of minorities. That must be the general view to be kept up. But I may be excused for stating one exception. Supposing a set of people come and say that persons belonging to their community should not be punished for theft, are we to agree to that proposition? Are we to change the penal code? In my view therefore

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the question of minority does not arise in matters penal Considering the stage of the Bill we have to take it that the society at large requests this House to pass this measure in the interests of the country as a whole?

MR. E SUBRAMONIA AIYAR: May I know whether a child marriage as such is made an unlawful act like theft in the Penal Code?

MR. C. JEBAMONY NADAR: I concede that it is not express.

But as I understand the local case law, when the legislature prescribes a penalty for an act in law, it amounts to a prohibition of the act.

Now I would proceed to another point. First Class Magistrates are responsible officers and they could be safely trusted for trials under this law. They must realise their responsibility to the public. If a Magistrate acts maliciously, he can be taken to task. Usually they are experienced men.

MR. P. S. NILAKANTA AIYAR: May I know how many experienced persons have been appointed as First Class Magistrates for the trial of these cases in a limited time?

MR. C. JEBAMONY NADAR: There is no time limit prescribed. It is a question of promotion and depends on the competency of the individual concerned.

MR. P. S. NILAKANTA AIYAR: Are there not cases of First Class Magistrates who have been invested with first class powers within a year or two of their appointment as such?

MR. C. JEBAMONY NADAR: That depends upon the supposed competency of the individual officer. Magistrates, if and when they function maliciously will have to suffer, at the hands of Government and the public as represented by the legislature.

MR. P. S. NILAKANTA AIYAR: Does it not show that the Magistrate has not become sufficiently an experienced officer to discharge a responsible duty?

MR. C. JEBAMONY NADAR: If a Magistrate is not exercising his powers properly, there are different ways to seek redress. General insinuation is an insult to all the existing Magistrates and to those who are likely to become Magistrates in future. The object of punishment is to improve the culprit who is a member of society. There have been First Class Magistrates not only in Travancore but all over India exercising such functions. I do not see any reason why the amendment should not be accepted.

MR. E. SURRAMONIA AIYAR: May I know from the member whether in India or elsewhere these Magistrates were exercising jurisdiction in a case in which the statute has no jurisdiction?

JEBAMONY NADAL: Not as a rule but as exception.

MR. E. SUBRAMONIA AIYAR: Is it the suggestion of the honourable member that Magistrates who try such cases in British India or elsewhere by Statutes have got jurisdiction over them?

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MR. C. JEBAMONY NADAR : Power is given by Statute. There are also special enactments under which certain powers are given to different Magistrates.

MR. E. SUBRAMONIA AIYER : Is the honourable member aware that so far as Criminal Procedure Code is concerned, practically and substantially, Magistrates can proceed upon information supplied only in cases where the offences are non-cognizable ?

MR. C. JEBAMONY NADAR : Cognizable and non-cognisable are peculiar to the Criminal Procedure Code. What the honourable member says is correct to that extent.

MR. E. SUBRAMONIA AIYER : My suggestion was that the policy uederlying the Criminal Procedure Code was to give the Magistrate power to initiate prosecution only where cases are investigated. I was only pointing out the policy. Is it the suggestion of the member that so far as this matter is concerned that policy should be followed ?

MR. C. JEBAMONY NADAR : So far as I should think, the very same policy should be followed here also, except to the extent modified by the Bill. If the Police investigate cases it is because those are offences affecting society. This Bill I presume, deals with an act affecting the society at large, and as such, the provision for information to the Magistrate is very necessary because under this enactment we do not give any express power to the Police to investigate.

MR. E. SUBRAMONIA AIYER : Is it the view of the honourable member that child marriage is more heinous than adultery and bigamy?

MR. C. JEBAMONY NADAR : My humble view is that the one is as bad as the other.

MR. E. SUBRAMONIA AIYER : Is the honourable member aware that in the case of adultery and bigamy the Magistrate cannot take cognisance of the offence on mere information ?

MR. C. JEBAMONY NADAR : I am not quite sure of the position of law in regard to that matter.

MR. E. SUBRAMONIA AIYER : Will the honourable member refer to the Criminal Procedure Code and verify the matter ?

MR. C. JEBAMONY NADAR : I am not now in possession of the Procedure Code. As soon as I go home I shall do it to respect the advice of my "Guru".

DEPUTY PRESIDENT : You may now attend to the business before the House.

MR. C. JEBAMONY NADAR : Magistrates have been exercising this power all along. If they do not exercise that power properly, then as I said before there are other means of dealing with them. I do not presume that any first class magistrate is so foolish as to start a prosecution as soon as he gets any piece of paper or any shabby information.

One argument advanced by Mr. E. Subramonia Aiyer was that this provision was like giving an over doze. But I say that in this particular case there is no harm in an over doze. We want to kill the evil practice, if it cannot otherwise be cured. Just as we do away with mosquitoes or stray dogs we desire to deal with this practice.

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Another argument was that we are blindly following the British Indian Act. I do not understand it like that. We follow almost every other law of British India. Let us take our Law of Contracts and our masters of law of the Madras University on that subject. They cannot be discarded merely because they are the products of a British Indian University. The Amended Saradha Act is in force in British India. Even after the Congress Ministry has come into power it has not dared to make any change. That means that it is in accordance with the popular wish.

MR. M. SIVATHANU PILLAI: Does the honourable member know that Mahatma Gandhi is deadly against child marriage?

MR. C. JEBAMONY NADAR: Yes Sir, and I wish that those members of the parti ular community who now oppose this Bill change their outlook on sentiments.

MR. E. SUBRAMONIA AIYER: Does the honourable member know that Mahatma Gandhi is more a politician than an acquirer of old traditions and culture?

MR. C. JEBAMONY NADAR: Eminent in everything ideal. We have heard of inter-communal marriages among families occupying the fore front in Indian society. Son and daughter of eminent men are united in marriage giving the death blow to communalism and sentimentalism. I may refer to a case of History. A pious Brahmin Rev. Davidson was the pastor of the L. M. S. church at Nagercoil. He preached against child marriage. As a man belonging to the London mission, I was thus taught by a Brahmin that child marriage was a social evil which has to be avoided. If I support the Bill it is because of the respect which I have for that Brahmin's teaching.

MR. E. SUBRAMONIA AIYER: Does the member know that when the fresh waters of a river joins the sea it also becomes saltish?

MR. PUTHUPALLY S. KRISHNA PILLAI: Sir, I rise to point of order. Members are speaking amongst themselves and not addressing the Chair, which very often prevents us from following what is taking place in the House.

DEPUTY PRESIDENT: Members should take notice that they should not talk to each other but should address the Chair.

MR. JOSEPH VITHAYATHIL: Sir, when Mr. E. Subramonia Iyer put the question, evidently, the implication was that when the Brahmin becomes a Christian it is something like the good water of the river joining the saltish water of the sea.

MR. E. SUBRAMONIA IYER: Sir, a word of personal explanation. I should not be misunderstood in that sense. I am of the view that saltish water is more useful than fresh water. I merely gave an example to show that the custom of one community will not remain as it is when it becomes part of another community. It does not make any

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distinction between one man and another. I did not mean any disparagement or discredit to any community. If I caused any ill-feeling to any of the honourable members, I most humbly withdraw the statement and tender my apologies for the same.

MR. C. JEBAMONY NADAR: Sir, I have said enough in support of the amendment which in my view deserves a place in the statute under consideration. Else I might become saltish I resume my seat by commending the amendment to the unanimous acceptance of the House.

MR. N. RAMAKRISHNA PILLAI: I oppose the amendment. I should have thought there is no justification for interfering with the life of a community as it is the duty of the State to see that the health of the citizens is maintained and that minors, lunatics and disabled people should be taken under the protection of the State. It is only on that principle that such a legislation would be justified. Taking that view I should think that the offence should have been treated as an offence against the State. This piece of legislation is not brought forward by Government. It is a private piece of legislation. The State itself does not recognise the evils of the practice. This legislation is introduced at the instance of a private individual and as such the only inference that can be drawn is that it is a legislation intended to effect a social reform. The communities that are to be affected by this legislation do not come forward to support it. On the contrary, we find that the community most affected by this piece of legislation is the foremost in opposing the measure. In regard to the other provisions of the Bill it will be seen that the offence created under this Bill is not an offence wnich affects the whole community but only one particular community. There are several means of prosecution under the Criminal Procedure Code. There are prosecutions which can be initiated only on complaint by an aggrieved party or only on information in certain circumstances. But what do we find in British India? The proposal that is suggested by the amendment is that the prosecution should be started on the complaint of anybody. It need not be on the complaint by the aggrieved person. You will find that the act itself is not an offence under the Regulation. Suppose an offence under the Regulation should be proceeded with and the prosecution should be started at the instance of anyone among the public. It is not restricted to any member of the community or to the aggrieved party. Now what is the principle underlying such a prosecution? Is it a prosecution intended to protect the interest of any particular person or body of persons? The expression "information laid before it" is open to objection in several respects. In the first place can it be said that the Magistrate received any information? Is it an active step or only a passive one in the sense that the Magistrate has received information from some quarter or other. I think there is absolutely no justification for initiating prosecution apart from a complaint from the aggrieved party. In the present case the amendment seems to introduce another means of initiating prosecution. Now what is the justification for introducing another means of initiating prosecution under the Regulation? We find that in Civil Procedure Codes, there are several ways of initiating a prosecution. Under this amendment the prosecution can be started on the application of anybody.

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DEPUTY PRESIDENT: Order, Order. Will you take up some more time to finish?

MR. N. RAMAKRISHNA PILLAI: Sir, I may require some more time.

DEPUTY PRESIDENT: Then the House will now adjourn for lunch to meet again at 2. P. M.

The House adjourned at 1. P. M.

The Assembly met after lunch with the Deputy President in the Chair.

MR. N. RAMAKRISHNA PILLAI: Any member of the Public is at liberty to initiate a prosecution under the provisions to punish him if it is not a bonafide one. But here for a complaint made by an aggrieved person there is absolutely nothing to prevent him from doing so. I cannot regard the provisions here as a safeguard against indiscriminate prosecution. On the contrary the amendment will give another way to initiate prosecution; that is, by giving information only by any member of the public. My objection therefore is that there is absolutely no need to introduce any further right to initiate prosecution than what is in existence in the Penal Code. Above all the amendment means to extend the time for prosecution. It is said prosecution can be started within one year of the marriage. Such a long period of time should not be given to initiate a prosecution. I submit therefore that in this particular instance it is necessary for the accused to produce evidence even after one year, There are provisions to the effect that the burden of proof falls upon the accused. It is the duty of the accused to prove that he was not a party to the marriage. In such a case it will be highly inimical for him if the period of prosecution is extended to one year because he will not be able to adduce evidence in favour of him. Considering all these aspects I think it is highly unjust if this amendment is accepted and so I cannot support it. With these words I oppose the motion.

MR. PUTHUPALLI S. KRISHNA PILLAI: Sir, as was pointed out by some Honourable Members, this amendment, if carried, would bring about two changes in the existing clause. One is in regard to the method by which offences of this nature can be taken cognizance of by a court. The second is in regard to the period of time prescribed for starting prosecution. It must be remembered that the original of this bill, that is, Act XIX of 1929 underwent vast and varied changes within 9 years since it came into law. It was observed by one honourable member that we are not to be guided by what the British Indian Legislatures do and that we should guide ourselves by our own principles which appear to us reasonable and sound. I concede that argument; but one thing must be remembered. We are not entitled to ignore the experience of a big State like British India and that the original Act XIX of 1929 was worked there for a period of 9 years Public opinion there has shown that Section 8 corresponding to clause 8 was not found to be working satisfactorily in British India. As they found it ineffective they changed it. There was a particular reason why it was found to be ineffective.

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It was pointed out that in regard to marital offences the law provides that there shall be a complaint preferred by some aggrieved party. This legislature proposes now to deal with this matter on an entirely different footing even though it is a marital offence. One great difference between this marital offence and other marital offences is, that in the case of every other marital offence there is one aggrieved party. Take the case o; bigamy. A husband is prosecuted for the offence. That necessarily implies that there is one aggrieved party namely his wife. There is absolutely no harm in thinking in that case that this aggrieved person could prefer a complaint. Then again in the case of adultery there is a husband who is an aggrieved party. If it is the husband who is an offender there is the wife who is the aggrieved party. In all these cases there is an aggrieved party contemplated. In the case of other marital offences, like enticing or taking away or detaining with a criminal intent a married woman, then also there is an aggrieved party. The law says if that aggrieved party prefers a complaint the court shall take cognizance. Here in this case it is also a marital offence but in the strict legal sense it is not a marital offence. As was pointed out by the honourable member Mr. E. Subramonia Iyer the law does not treat marriages between minors as unlawful. It is an offence more against the public weal than an infraction of any marital relationship. So it is not exactly a marital offence. The issues born of such couples are not illegitimate. It does not bring any disharmony in the circle; but nevertheless the law does not favour it. But at the same time the law is not able to prevent a vast majority of such alliances. In 98 cases out of 100 such marriages take place at the instance of persons who have absolutely nothing to do with the marital aspect of the union. In all these cases this marital offence would not come into existence but for the convenience of such persons. Therefore the law says we will deal with such persons. In the case of persons who are of marriageable age the law says we will have a hold on them also. That is the exact position of law here. Therefore in this particular case I was anxiously trying to hear some argument what class of persons should complain against the offence. The law says "you shall not perform such a marriage. Is there anybody else to say so? Is there any person aggrieved by the celebration of such a marriage? So the class of aggrieved persons whom the law contemplated for the purpose of other marital offences cannot be thought of in this case because there is no individual who could be said to be aggrieved.

MR. E. SUBRAMONIA AIYAR: Is it the view of the honourable Legal Remembrancer that the feeling that the child marriage is an evil is not so strong in Travancore as to make it impossible for a few people to come forward and complain if, as a matter of fact, a child marriage is performed, so much so this Act or this Bill must be necessarily made something like a quarantine Act or a sanitary Act. To make myself clear, if the view of the Legal Remembrancer is this that the feeling for this reform is not so acute and not so strong as to induce all those zealous people to come forward and to complain of the

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evils of child marriage, is it the view of the honourable member that we are to create an opinion for that purpose or leave it to the public officers to put into effect such a reform ?

MR. PUTHUPALLI S. KRISHNA PILLAI : Sir, I was coming to that point and if my honourable friend would have waited for a few minutes he would have heard my views So far as this offence is concerned you cannot contemplate an aggrieved person. My friend asks me whether it is not possible to contemplate public spirited men who might bring to the notice of the court the infraction of law committed by a body of persons in the village.

MR. E. SUBRAMONIA AIYAR : Sir, an explanation. If the feeling that this is a reform is strong enough do you not expect zealous people to come forward and correct him.

MR. PUTHUPALLI S. KRISHNA PILLAI : Yes, my friend who knows very well the several provisions in the Criminal Procedure Code might agree with me that every good citizen is bound to help in the detection and prevention of offences. In spite of this the Criminal Procedure Code casts some obligation on land holders and villagers and the public in general. If the offence is committed within a village or to any person's knowledge, the Criminal Procedure Code provides that he is bound, on pain of conviction, to inform the police or other authorities about it. Theory is one thing, but the practical aspect is another thing. Now, my friend says : 'If the feeling of the public is not so much against the celebration of such a marriage why should you be troubled with this legislation ? I think I have very little to say on that question. Personally, I do not propose to supply any information whether the majority of the people are, or are, not in favour of this legislation. It is a matter for the House to decide. As Legal Remembrancer to Government I am called upon to explain what I myself feel in regard to the controversy that has been raised in this matter.

As I pointed out, you cannot conceive of an aggrieved person in this case. Sections 170 to 176 of the Criminal Procedure Code deal with specific cases which are made cognizable only at the instance of certain class of persons.

MR. E. SUBRAMONIA AIYAR : Does the honourable member feel it necessary that a set of persons styled 'marriage inspectors' or 'marriage investigators' be appointed by the Government, so that this vitally important law may be enforced ? Does the honourable member think that 'marriage investigators' should be appointed to see that this law is completely put into force ?

MR. PUTHUPALLI S. KRISHNA PILLAI : So far as my information goes Sir, there are Factory Inspectors proposed by Government to look after the factory affairs, and as this Bill has not yet come into law and as Government themselves are not made aware of the general tendency on the part of any community to disobey the law that is to be enacted, Government are not in a position to consider this question. If it so happens that this House passes this legislation and often power for the purpose is vested with Government, if it is brought to the notice of

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the Government that any community or any large section of the people disobey the law, I am quite sure, Government will take such steps as they deem necessary.

DEPUTY PRESIDENT: You mean to suggest that in case of continuance of infringement of the law amendment of the law will be considered.

MR. PUTHUPALLI S. KRISHNA PILLAI: Yes.

We cannot conceive of a person who is particularly competent to decide whether a case ought to be lodged. There is no body of persons particularly competent to advise or to inform the court or to prefer a complaint about an offence of this nature. Another class of cases referred to by Mr. E. Subramonia Aiyar is in respect of offences committed by Government servants who are not removable from office except with the orders of the Government. It is emphasised that in the case of such officers proceedings could not be taken against them unless sanction from the Government is obtained. Is it possible to conceive of an analogous procedure in the present case? There cannot be any aggrieved person; there cannot be an authority who is competent to investigate this matter and decide whether a prosecution can be lodged. There is no authority under whose protection or direction the marriage is celebrated.

MR. E. SUBRAMANYA AIYAR: One question, Sir. Is it the view of any Hon'le friend that there must always be an aggrieved party in order that the power to initiate a prosecution may be vested in a person other than the Magistrate?

Does the Hon'ble member know that all legislatures elsewhere have enacted that prosecutions shall be initiated only if a law is set in motion by persons who are called informers, even in cases where the informers are not aggrieved?

MR. K. R. RAMASUBBA SASTRI: I may also put a question Sir.

DEPUTY PRESIDENT: Let him answer the question already put.

MR. PUTHUPALLI S. KRISHNA PILLAI: In regard to certain matters where the State is the aggrieved party, what is ordinarily done is to make such cases cognizable. If it is the honourable member's view that this is an offence which may be made cognizable, I think all the difficulty is solved. But the mover does not propose to be so ambitious. After all, the State need not be connected with this matter. If any person from the public comes forward, the court may decide. That is the distinction I draw between cases in which there are aggrieved persons and where there are no aggrieved persons. If in this particular case, any honourable member could point out the authority or the institution which will be in a better position than the general public or the State, we could provide that no case shall be taken cognizance of by the Magistrate except upon complaint lodged by such and such persons.

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MR. K. R. RAMASUBBA SASTRI: Sir, one question. May I know, whether in the case of persons who believe that there is a divine command to perform this child marriage, it would not be prudent on the part of the Government that prosecution should be launched by the Government or by responsible officers entrusted by Government with the trial of the case?

MR. PUTHUPALLI S. KRISHNA PILLAI: That is again going back upon the principle which we have adopted. Apart from the religious scruple of individuals or communities, the legislators think that it is a matter which must be put in the forefront of all those scruples. It is a matter which ought to be penalised. If we have adopted that principle or provision, where is the force in the argument that persons who are swayed by religious feelings are prone to commit offence under this Act. I cannot clearly understand the force of such an argument. If it is an offence, apart from religion, apart from your community, apart from the custom or personal inclination, it shall be treated as an offence. What is the method of dealing with this matter?

MR. P. S. NILAKANTA AIYAR: Would it not be better to introduce such officers to give effect to the provision of this Bill rather than introduce such amendments?

MR. PUTHUPALLI S. KRISHNA PILLAI: I do not quite follow, Sir.

MR. P. S. NILAKANTA AIYAR: Sir, the Legal Remembrancer said that it is better to wait and see whether it is necessary to appoint Inspectors in respect of offences committed under this Regulation. Would it not be better to wait and see whether a legislation is necessary in this matter by amending the suitable provisions of the Criminal Procedure Code. I ask, whether it will not be more expedient to appoint the Inspectors to make a report rather than introduce an amendment at this stage?

MR. PUTHUPALLI S. KRISHNA PILLAI: Sir, I did not make such a statement. When my friend Mr. E Subramonia A yar referred to the question of appointing 'marriage Inspectors", I said "there is one Statute in which an Inspector's appointment is sanctioned. There are others as well. If the persons affected insist that Inspectors should be appointed it might be done, but I am not at present concerned with the details of the question.

All that I therefore say is that in the absence of any class of persons who are particularly competent to launch the prosecution or to bring these matters to the notice of the court and in the absence of persons who come forward as complainants before the Court, I think the Magistrate, as the Mover proposes, must be in a position to start a prosecution on information laid before him.

As I pointed out, Act XIX of 1929 which provided for offences being taken cognisance of one upon complaint has been found to be thoroughly insufficient to meet the ends of this piece of legislation; nine years' experience has proved that. It is not, as my friend Mr. Nilakanta Aiyar put it here today, that there is only one community, namely, the Brahmin community which was affected in British India by the

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Sarda Act. After all, it was open to members of his community as well as every other community to launch prosecutions. It is not necessary that a prosecution should always end in conviction; prosecution need not always be genuine or true. As I submitted, it is quite open to members of my friend's community also to launch a prosecution against a Mahommedan for instance, and obtain an injunction just before the day of marriage, restrain the marriage and cause immeasurable loss to the parties to the marriage. It is open to my friend, if he finds that in his neighbourhood a Mahommedan girl of fifteen is going to be married to a Mahommedan youth of nineteen, to put in a complaint and prevent the marriage. Who can say that he has not got the opportunity to do it? Therefore, to argue that the Brahmin community will form the butt end of prosecutions by members of all the other community is a proposition which I cannot subscribe to. It is not reasonable to suggest that the members of every other community are anxiously awaiting the beat of the drum or the sound of music in the marriage pandal of a Brahmin house, so that they can immediately rush to the Division First Class Magistrate of the locality and pray that the marriage should be stopped. At any rate, in the generality of cases, no such thing would happen. Even if it happens there are several ways of retaliation open to the members of my friend's community; half-a dozen samaritans of my friend's community may form themselves into an association and go about launching prosecution after prosecution against the parties to the marriages in every other community.

Sir, my friend Mr. E. Subramonia Aiyar, in his amendment says that, in order that a complaint can be filed, there should be at least five persons all belonging to the community to which the parties to the marriage belong.

MR. P. S. NILAKANTA AIYAR: Sir, are we at that amendment? I was told we are not.

MR. PUTHUPALLI S. KRISHNA PILLAI: I am at the amendment which is now being discussed, namely, whether the action can be only on complaint or whether it can be also on information laid. The British Indian legislature has tried the provision that action should lie only on complaint; that provision has proved to be inadequate. That is why they have now added "on information laid". Sir, although it seems to be apprehended now that every member of every other community is waiting for this Bill to become law so that he might launch prosecutions against Brahmins who celebrate marriages, I do not think any one who has anything of his own to do would really think of interfering with his neighbour's affairs. I do not see what really I have to do with a marriage celebrated in my friend Mr. Nilakanta Aiyar's house. Unless I have absolutely nothing of my own to do, and also have other people's money about which I have absolutely no responsibility, I am quite sure I would only sit at home, read my books and attend to my work. Why should I go about launching prosecutions against persons who perform child marriages?

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MR. N. RAMAKRISHNA PILLAI: May I ask who is interested in eradicating child marriage?

MR. PUTHUPALLI S. KRISHNA PILLAI: Society at large. I ask, Sir, how many of the sixty lakhs of people in Travancore are bent upon seeing that this evil of child marriage is completely eradicated, especially when these prosecutions involve a certain amount of pecuniary expenditure? You cannot certainly expect an ordinary man to go to a court of law, prefer a complaint, wait upon the court, see that summons is issued, pay a lawyer, and undergo all the difficulties merely for the purpose of seeing that Mr. Nilakanta Aiyar is brought to book, unless it be that he has some private animosity against Mr. Nilakanta Aiyar. On the other hand, if a marriage is performed at Trivandrum and my friend Mr. Vaikom Ramakrishna Pillai happens to be living at Vaikom and hears of the child marriage performed here, he may being very much interested in the eradication of the evil of child marriage, spend three quarters of a chuckram and write to the Trivandrum First Class Magistrate that on such and such a date a child marriage was performed at Trivandrum and that such and such persons were parties to the marriage. That is what we might call "laying information before the court". On such information the Magistrate would make enquiries, take the case on his file and proceed with the prosecution. Notice may also be issued to Mr. Vaikom Ramakrishna Pillai; but he is under no legal obligation to substantiate his statements. We may take it that the Magistrate will proceed on the information received by him only if he finds on enquiry that the information is all true. On the other hand, in addition to pecuniary investment in the case of a formal complaint there is the risk not only of compensation under the Criminal Procedure Code but also of a prosecution for defamation. I ask, Sir, how many are there willing to put themselves into that situation for the purpose of eradication of this evil? We all know that every day, around us, hundreds of offences—cognizable offences—are, being committed. But how many of us have taken care to inform the authorities, the Police or the Magistrate, of such offences. Sir, we are all old men, sufficiently old, and during this long period of our life we must surely have come across ever so many instances in which offences have actually been brought to our notice but about which we have never cared to inform the authorities. That is the generality of human conduct even in respect of more serious offences. Is it the expectation of this legislature that everybody in this country should start prosecutions or should bring to the notice of the authorities every infraction of every rule of law enacted here?

MR. N. RAMAKRISHNA PILLAI: Is it right that, without incurring any responsibility whatsoever, people are allowed to lodge complaints?

MR. PUTHUPALLI S. KRISHNA PILLAI: In the case of complaints' certainly, the complainants have very serious responsibilities. But, in the case of a cognisable offence, who has got the responsibility?

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MR. E. SUBRAMONIA AIYAR : May I ask whether, under the law, if ultimately the prosecution case is proved to be unfounded and malicious, the person who gave information to the Police is not liable to pay compensation ?

MR. PUTHUPALLI S. KRISHNA PILLAI : Yes, in some cases.

MR. E. SUBRAMONIA AIYAR : May I ask further whether, the Magistrate is bound to disclose the source of the information which has led to the prosecution, so that when such information has been proved to be false, the informer could be proceeded against ?

MR. PUTHUPALLI S. KRISHNA PILLAI : No. But we can ordinarily expect that responsible officers of Government would exercise their discretion, make the necessary enquiries, satisfy themselves as to the *bona fides* of the informer and then alone start the prosecution. The mere fact that some information has been conveyed to the Magistrate does not mean that it would mature into a prosecution. If a person, knowing all the risks involved, leaves all his business, goes to the authority and gives some information, and also swears on oath as to the truth of such information, we can naturally infer that it is a fit case for enquiry by responsible officers like Magistrates. In fact that is what we mean by "information laid".

I am sure every honourable member of this House would realise that all that is contemplated by this measure is to afford larger facilities for prosecution of offenders under this Bill. As I submitted, it has been found in British India that a large number of cases escaped the clutches of law because of the insistence upon formal complaints.

MR. E. SUBRAMONIA AIYAR : Will the honourable member be good enough to enlighten the House as to the reasons which induced the British Indian legislature to adopt this change ?

MR. PUTHUPALLI S. KRISHNA PILLAI : I do not know, Sir, probably, their reasons were faulty ; I am now advancing my own arguments, and it is open to the honourable House to reject them if it finds them not acceptable.

MR. E. SUBRAMONIA AIYAR : Is it not because all enthusiasm on this matter ceased with the mere passing of the enactment and publishing it; and when it actually came to a question of preferring complaints and doing some work, no one was really found forthcoming ?

MR. PUTHUPALLI S. KRISHNA PILLAI : That may be. In this matter, since there is nobody who is personally aggrieved, you cannot expect anyone to come forward with a complaint. If, on the other hand, a person trespasses into my compound and takes away my cocoanuts, I naturally feel aggrieved and prefer a complaint. Similarly, if I am assaulted, I have a personal grievance On the other hand, in regard to child marriage, what is my grievance except the general feeling that every law in the State should be enforced and obeyed. How many are there, I ask who are actuated by that high sense of duty? I am quite sure even my learned friend Mr. E. Subramonia Aiyar would have come across several crimes committed to his knowledge but naturally he did not take it into his head to inform the authorities about them

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MR. N. RAMAKRISHNA PILLAI: Is not this Bill intended as a measure of social reform, so that social reformers might be expected to launch prosecutions against persons offending the law.

MR. PUTHUPALLI S. KRISHNA PILLAI: Yes, it is quite open to social reformers to form themselves into associations and to launch prosecutions against persons offending this Bill. If there are such persons they will be quite welcome. The Magistrate has to act on the power which is given to him. If the offence is to be taken cognizance of only upon complaint, we cannot expect an aggrieved person to come forward in this case, unless he is actuated by malice against the individuals concerned or by a high sense of duty. In either case the number according to me will be very limited. At any rate experience shows that the number will be very limited. That means that several cases would go undetected or unpunished. That means that the Act, to enact which we are being put to so much trouble, would be rendered ineffectual. This amendment appears to be intended to enable the authorities to enforce the law that the legislature enacts. Otherwise it is likely that several persons who would be brought to book or who would be prevented from committing the offence would be allowed to perpetuate an evil which this Act intends to counteract.

MR. P. S. NILAKANTA AIYAR: Are there instances of prosecutions being launched on the letter received from somebody?

MR. PUTHUPALLI S. KRISHNA PILLAI: I had never been a Magistrate in my life and I cannot therefore say whether a prosecution has been launched on a letter received by somebody. I can only read to my friend Section 170 of the Criminal Procedure Code which is wide enough to include that contingency also. Whether a Magistrate will act on an anonymous letter I cannot say. "A Magistrate of the First Class or any Magistrate of the Second Class who is empowered by Our Government in this behalf may also take cognizance of an offence upon information received from any person other than a police officer or upon his own knowlege or suspicion that such offence has been committed." They are the powers of a First Class Magistrate or a Magistrate of the Second Class who is specially empowered by Government.

MR. P. SIVARAMA PILLAI: Is the member aware that in certain towns in British India associations have been formed by social workers to inform the Magistrates concerned about child marriages?

MR. PUTHUPALLI S. KRISHNA PILLAI. Yes. Some such things might be done here also. But the Magistrate must be competent to take cognizance on information supplied. We are at the question whether he can take cognizance of the offence only upon complaint or whether he can take cognizance of it even on information laid. That is the first portion of the amendment. The learned mover thinks that if the provision is confined to the power to take cognizance of the offence only upon complaint it will render the working of the Act ineffective or unsatisfactory. Therefore one more method by which a Magistrate can take cognizance of the offence is provided in the amendment. If this House is of the conservative view that the Magistrate shall take

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cognizance only upon complaint, then it will have to support the clause as it stands. But if this House is satisfied that there will be paucity of complainants and the possibility of well-merited prosecutions escaping the notice of the authorities and if the House thinks that an enabling provision must be made, it may support the amendment.

An argument was advanced whether there is not a difference between "information laid" and "information received." No doubt, the Criminal Procedure Code makes use of the expression "information received," but this Bill makes use of the expression "information laid." Information laid is information that is placed by somebody but information received need not necessarily be placed before the court. The difference in the dictionary meaning of the two expressions appears to me to be this. In order that information may be laid, it contemplates another human agency. Somebody lays the information before the court. On the other hand, if it is merely information received, it may be received by any means whatsoever. It need not necessarily contemplate a human agency, a third party. That appears to be the distinction.

MR. E. SURAMONIA AIYAR: Under the Criminal Procedure Code when a Magistrate takes cognizance of a case upon information received, is there not some provision that that Magistrate should not try the case and if this Bill comes into law is it the view of the Legal Remembrancer that the same Magistrate who has had information before him should try the case?

That is the reason why I brought out the distinction between information received and information laid. If he receives information he should not try the case according to the Criminal Procedure Code. But is this amendment maintaining that distinction or are we to take it that information laid means that information must be laid by some body before the Magistrate.

MR. PUTHUPALLI S. KRISHNA PILLAI: Sir, Section 170 which I read just now says that a Magistrate of the First Class or of the Second Class specially empowered can take cognizance of a case upon information received from any person other than a police officer. Sir, the position is made clear that it must be information received. Here the expression used is "information laid." There the expression used is "information received from any person other than a police officer or upon his own knowledge or suspicion that such offence has been committed." It deals exhaustively with the several contingencies and leaves no room for doubt. So much may be conceded. But here the other expression also appears to be not capable of doubt. My friend Mr. E. Subramonia Aiyar put the question whether the Magistrate himself can take cognizance of that offence. That matter, I submit, must be governed by the Criminal Procedure Code itself, no special provision having been made in the present Act. As a criminal case it must be considered under the Criminal Procedure Code and the

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provisions contained therein will apply with equal force to cases of this kind as well. If a Magistrate cannot go on with the trial of a case which he has himself taken on his file or which he has investigated and in which he himself will have to be a witness, the same rule will apply here also. I do not think there is any very great difficulty in this matter.

The second question is in regard to the time limit, whether it should be six months or one year. Ordinarily no time limit is fixed for a prosecution but special provisions are made restricting the period within which a prosecution may be launched. The period of limitation is fixed in order that frivolous and belated prosecutions may not be brought forward in court. Take a case in which a person may be aggrieved or a case in which a person sustains some injury. He might probably think that no prosecution need be launched. But after the lapse of some time, on account of some misunderstanding he might regret that he has lost his opportunity and then he might think of coming forward with a prosecution. The law wants to prevent such cases' Therefore it is that on some occasions in the case of certain offences the law prescribes that if a prosecution is launched it should be launched within such and such a period. Of course, my friend's complaint is that the maximum fixed under the Limitation Act for certain cases is only 90 days. The period of six months in the Bill is sought to be raised to one year by the amendment. On that question it is the sense of the House that must prevail. Personally I do not see why it should not be one year or why it should be six months. After all, if an offence is committed in respect of marrriage and if the provision is retained that the Magistrate can take cognizance of the matter on information received, any period smaller or greater may be sufficient and it is left to the House to decide what it should be. In that case, I have only one suggestion to make. The amendment itself may be split into two parts and allowed to be voted upon separately. That I think may solve the difficulty. There is no harm in doing that and the Chair has got the power.

MR. K. R. RAMASUBBA SASTRI: Sir, I beg to oppose the amendment on the following grounds. I am a slow thinker and I fear I may be a slower talker even. I would therefore request the indulgence of the House, as I have to dwell on various matters which might perhaps be not to the taste of the House. Generally in these matters people look only to the physical aspects or the material aspect of things. But I think there are much more important and serious aspects which have to be considered especially in a matter of this kind, a marriage which affects not only the prospects of the parties here but also if there is a hereafter, there also. May be there are members in this House who may not be prepared to think that there is a hereafter, but before proceeding to discuss that aspect of the case I would just give the House a sort of index or compendium of the subject on which I am likely to dwell in connection with this question.

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MR. M. SIVATHANU PILLAI: What does the member mean by the expression hereafter?

MR. K. R. RAMASUBBA SASTRI: I thought the term 'hereafter' was sufficiently explicit with reference to all persons who have made any study on the subject of theology. If however, there is any doubt on that matter I may say there are a new set of persons against whom theologists like myself have to fight; the so-called rationalists who refuse to believe in an existence after death or dissolution of the physical body. Therefore, 'hereafter' means existence after the death of the physical body composed of three elements according to Hindu Theology *viz.*, water, fire, and earth. In order that my friend may follow me hereafter in the theological discussion that I propose to start presently; 'hereafter' means and includes three further elements, *viz.*, life, mind and personality. I suppose that the expression is comprehensive and mystic enough to satisfy the member as well as the other members of this House. If they are inclined to listen to me, I request them to hear me. I believe that, so far as English humour goes, a Parson is defined as a person who is invisible for six days and incomprehensible on the seventh day. If that is the defintion of Theology which the English language has adopted I do not see why the Hindu theology which is perhaps considered to be even more mystic should be denied the privilege of being more incomprehensible. With this preface I will just say what the points on which I propose to confine my remarks. The amendment before the House relates to complaints made and information made with reference to a child marriage under this Act. With reference to this, five aspects have already been brought to the notice of the House by the previous speakers, Messrs. E. Subramonia Aiyar, P. S. Nilakanta Aiyar and others. Mr. E. Subramonia Aiyar referred to the period within which a complaint has to be made and whether the person making it was competent to do so. If there is any abuse in the process of law there is the Magistrate to remedy the injured person. If any malicious information is given on which a prosecution has been launched the Magistrate is expected to give a patient hearing in the matter. With reference to this I may say that this question raises a very serious question which cuts at the root of all religions, not only Hinduism but also Christianity, Mahomedanism and even Buddhism, which though a negative religion also lays down some general principles of jurisprudence like 'karma' re-incarnation and a series of re-births. This principle is common to all the religions. But there is the question of whether a male is superior to a female or vice-versa. That raises the question of superiority or inferiority complex, In these matters I think, I may say, without fear of contradiction, that all religions are agreed that the female has suffered from an inferiority complex so far as theologians are concerned. Christianity says that from rib one out of twenty four parts of His Personality a woman was created. Mahomedanism, I believe, is equally if not more against the woman folk. Mahomed says that woman is the property of the male and that the female has no voice in that connection. Anyhow Mahomedanism allows a plurality of wives. That I dare say means an inferiority complex.

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MR. V. CHANDAMIAH: I beg to differ from the member.

MR. K. R. RAMASUBBA SASTRI: So far as I understand Mahomedanism I think that competency, money and capacity, all these enable a male to maintain a plurality of wives. Is the female allowed the same privilege that is what I want to know? I suppose not.

MR. C. JEBAMONY NADAR: In an amendment like this I do not know how all these theological discussions are relevant.

MR. K. R. RAMASUBBA SASTRI: I am surprised at this question, coming as it does from a member who a few minutes ago said that all those who support child marriage on the ground of religion should be killed like mosquitos. He also said that they are abnoxious persons who should not be allowed to live. I do not know how that member can rise up in his seat and put such a question when I defend on theological grounds that religion is the most important point. Hence, I oppose this amendment. It was this member who emphatically told the House that the mentality of those responsible for child marriage, the orthodox, senile, fossilized and old grey-haired mentality which is responsible for child marriage—should be hunted like mosquitos and that they have no business to exist in this world of western civilisation. I am surprised to see how such a gentleman can come forward and say that I am not entitled to speak on theological grounds in support of child marriage.

There is a good deal of misconception about the Hindu theology and scriptures, not only in this House but abroad and elsewhere. I now propose to deal with the ethical, philosophical and theological grounds on which a child marriage is absolutely essential if we are to seek our happiness and spiritual welfare not only in this world but also hereafter. Most members may not take cognizance of this.

DEPUTY PRESIDENT: That is a position which has been accepted by the House and we cannot be going back to the principle of the bill already accepted. Therefore the member will please note that we cannot attack the principle of the bill.

MR. K. R. RAMASUBBA SASTRI: Yes, Sir. The point as to who should lay the complaint—that is a very serious matter. I questioned the Legal Remembrancer whether it is not the duty of Government to take upon the matter when a prosecution is launched. We are not to be considered as irresponsible people. As the honourable members know we are responsible men who think that the welfare of the whole world depends on certain good actions. Brahmins to a large extent depend on child marriage as samekaru to ensure pure female mentality. After all the Hindu religion is very cosmopolitan and allows child marriage not because it is necessary in the interest of the members alone but it is highly necessary in the interest of society at large and in the welfare of the human beings at large. That is why I say it is necessary for me to dwell on the theological aspect of the question also.

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DEPUTY PRESIDENT: Whatever theological proposition you may expound you must make them relevant to the amendment under discussion.

MR. K. R. RAMASUBBA SASTRI: With due deference to the Chair and every body I shall make my remarks relevant to the amendment under consideration. Unless you understand the motive on which a man acts you cannot punish him for what he does. If a man acts on the highest motives possible on earth, is it proper to punish him obeying the dictates of his religion? So, much depends on the mentality you bring to bear on discussing this question in the connection. I believe most of us are aware that prayer also is a necessary instrument for the amelioration of all. Why should we pray if there is no theology at all? Much depends on the aspect of theology with reference to the conduct of human beings in this world. So I submit it is highly necessary that we understand the theology of Hinduism with reference to child marriage and its disposal one way or another by this House.

MR. C. JEBAMONY NADAR: Does the member say that we do not know anything of theology?

DEPUTY PRESIDENT: The member will try to make his observations relevant.

MR. K. R. RAMASUBBA SASTRI: Yes, I am trying to make it relevant Now what is the general principle on which a human being should guide his conduct in this world? I suppose that is a question in which we are all interested.

DEPUTY PRESIDENT: To put it so broadly is not relevant.

MR. K. R. RAMASUBBA SASTRI: I am afraid I have put in such a hard word as theology I myself am afraid whether the members may doze over the question and after all, it may mean a mere waste of time. So I shall try, as far as possible, to put it on a broad ground. I have taken one general principle. There is for all religions, what you call, one God. I will first confine myself to this, Sir. Generally, the law of limitation is the most important law, not only in this world but also in the next. So there are a few points on which all religions may be said to be agreed, that God is an infinite omnipotent Being.

MR. M. SIVATHANU PILLAI: May I know whether we are legislating for persons in this world or for persons in the other world?

MR. K. R. RAMASUBBA SASTRI: As I said before, I am concerned with both. I am inclined to the view that it is ineffective for the sake of the sex relationship, which is after all, a tiny matter which lasts for a hundred years at the most. The six months have been extended to one year. I am sorry I could not put in an amendment that the complaints may be launched after a hundred years. Then there will be no question as to the burden of proof or to the disposal of the case. If a complaint was to be put in after a hundred years that would have solved all the difficulties Is this so very important that it should

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allow your relationship with the next world to be cast into nothing by the conduct in this world. That is why I appeal to all the members, if they believe in their own religion to listen to a few things comon to all religions that I am going to say. The human being is supposed to be the most important on earth. He stands above dumb creation and below God. He is the only person who is given power not only of being actuated by desire but also of controlling such desires. It is in that respect that the conduct of the human being has to be considered. According to Hindu theology, a human being has his activities in this world different at different times. I am now talking about the Manu on whose *Smritis* we are supposed to act. *Swayambhoo* Manu was the first.

DEPUTY PRESIDENT : You are going far beyond the point of discussion.

MR. K. R. RAMASUBBA SASTRI : Sex relationship is a very delicate matter which I have to deal with very scientifically so that it may not be offensive not only to the members of this House but also to the visitors who are present here to hear the discussion. As I said before with reference to this Bill there are ever so many matters to be dealt with. Havolock Ellis has to be referred to. All those authorities will be more or less undesirable in a discussion of this kind. That is why I am referring to this in a most unobjectionable manner. At least in the Select Committee I could have had a chance of pointing out the various details. Therefore I will come to the subject of the discussion after I dispose of the seven Manus. The law of limitation is the first point on which manifestiation began. We are not come to this world to enjoy.

MR. E SUBRAMONIA AIYAR : Are we not living subject to all limitations ?

MR. K. R. RAMASUBBA SASTRI : That is why I said that the subject of limitation is the most important. When I come to the subject of limitation I will tell you how it acts in relationship with God.

MR. KAINIKKARA M. PADMANABHA PILLAI : If the member is going to deal with theology we may sit after five O'clock. He may be called upon to speak on the subject before the House.

MR. K. R. RAMASUBBA SASTRI : Sir, I do not know why honourable members should be so very afraid of theology ?

MR. KAINIKKARA M. PADMANABHA PILLAI : I am not at all afraid. I know theology as much as the honourable member and am prepared to discuss with him on that subject.

MR. K. R. RAMASUBBA SASTRI : I am not prepared to concede that he knows as much as I do. He may know what he knows. But he cannot certainly say that he knows all that I know. He may know more or less than me. I am not concerned with him alone. I am addressing the whole House. As I said, are we concerned only with the question of marriage in the material sense ? Has it no effect hereafter ? Are we not justified in saying that a sacramental marriage

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[Mr. K. R. Ramasubba Sastri.]

affects my relationship with the future? Am I not entitled to say it here? I am not saying that the marriage should not be performed at all. It looks as if I am not allowed to talk of theology. That, I submit, is an unfair attitude. It affects all communities; not only the Hindus but the Mahomedans and the Christians alike. This proposition fits in with that of Mr. E. Subramonia Aiyar that five members of this community should try him. That, I submit is a principle of jurisprudence which has been applied from the very beginning of English history. That is, if a member of the House of Lords commits an offence, he has to be tried should be tried by 12 members of the House of Lords. If a member of the House of Commons has to be tried he should be tried by 12 members of the House of Commons. If an Indian Prince has to be tried he should be tried by 12 Indian Princes.

Honourable members of the Assembly do well know that the feelings which I express are of a large number of the members of my own community. I have already pointed out to this House that because we are in this world we are always living in an emotional atmosphere. And this emotional atmosphere has to be controlled by you by your intellect. Moreover if we are guided by our emotions we must also be able to know and understand the emotions of others. Really speaking emotion is the principle of conduct in this life. If we are not going to restrain and use it properly what is the use of this House where we are going to legislate laws for the well-being of all communities including minority communities. Let us be cosmopolitans in this respect. I request you to give me a hearing. You are now going to pass a bill that affects me vitally. I may not be able to muster many votes to defeat the bill. Anyhow I am thankful to the Legal Remembrancer who said that this bill is not only intended against the Brahmin community alone but against all communities.

MR. M. SIVATHANU PILLAI: May I know from the honourable member whether there is not a Brahmin community in British India where a similar bill has been passed?

MR. K. R. RAMASUBBA SASTRI: My friend is somehow or other enamoured of British India by referring to it constantly. But I ask what about Cochin and Mysore where similar bills were brought forward? Are the people of Cochin less intelligent than we are? Or the people of Mysore not sufficiently advanced in civilization? But we must be mindful of the facts that they are our sister states and it is always well for us to copy them than to copy British India. Were not measures like these thrown out in Mysore and Cochin?

MR. C. JEBAMONY NADAR: May I know whether these bills were thrown out by the legislatures or by the respective Governments

MR. K. R. RAMASUBBA SASTRI: They were thrown out by the legislatures on the advise of the Law Member of the respective States. Sir, I am again thankful to the Legal Remembrancer for assuring me that after all this bill is not intended as a threat against the Brahmin

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community. But I may refer to this later on when I ask for exemption. But at present let us deal with the subject in a broad and sympathetic way. The question here is whether as human beings we do not owe allegiance to God. By being human beings we respect the rights of property and persons and the rights of marriage as well. So long as nature has not taken up that responsibility of keeping guard over a minor in regard to marital relations, the custody of the minor now rests with the parent and the parent is responsible not only to the law of the land and also to the ethical and religious laws of his being. I say let me be allowed to say a few words in this matter. Let us not in this connection throttle discussion on party considerations by saying that theology is a subject which we do not want to discuss. Sir, but the protection of a child is a much more important matter so far as this child marriage or any other relationship between sexes is concerned.

As I said before, Sir, the question of theology is also a very important matter. There is a relationship between the sun, moon and the earth.

MR. P. SIVARAMA PILLAI: I challenge that statement,—

MR. KAINIKKARA M PADMANABHA PILLAI: May I know whether the member opposes or supports the Bill.

MR. K. R. RAMASUBBA SASTRI: I thought I began by saying that I oppose the amendment. To continue what I was saying, the position of human beings with reference to the power of the Sun, Moon and the earth.

DEPUTY PRESIDENT: You cannot proceed in this strain. It is quite irrelevant.

MR. P. SIVARAMA PILLAI: Sir, I challenge the statement.

MR. K. R. RAMASUBBA SASTRI: The Bhagavad Gita, the Ramayana, the Bhagavatham and Vedavyasa's Brhama Sutra all these Hindu Religious Texts assert and affirm my view.

DEPUTY PRESIDENT: But here it is a simple question which we have to consider, *i. e.*, which court shall take cognizance of the offences committed under the provision of this Bill.

MR. K. R. RAMASUBBA SASTRI: Then my submission is that the position that I shall be subjected to answer only a complaint preferred against me by at least 12 members of my community is proper.

DEPUTY PRESIDENT: This you can say by not entering into the realms of theology or philosophy.

MR. K. R. RAMASUBBA SASTRI: Sir, is not the relationship of the sexes one of theology? It is after all, a connection between protons and electrons. But Sir, the sex relationship stands on a more emotional sphere. The Hindu Sastras say that there are two sorts of beings superior to us the Rishis and the Devas. Will any honourable Member, say, that a discussion of that question is irrelevant? And the human beings subordinate themselves to the will of Rishis and Devas. These codes of conduct is embodied in the sacred literature entrusted

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[Mr. K. R. Ramasubba Sastri.]

to us by such Rishis and Devas. Sir, let us take the various gradations of life and mind and the absolute principles employed in the conduct of human beings. Swayambhu Manu was the first man.

DEPUTY PRESIDENT: It is quite irrelevant.

MR. K. R. RAMASUBBA SASTRI: If what I say is irrelevant then the whole literature on Hindu Philosophy must be thrown into the Bay of Bengal. If we are not concerned with the question of sex how can we deal with a question of child marriage.

A few days ago, Mr. H. G. Wells who came to India said that great men like Gandhi, Nehru, and Bose are the products of western civilisation. A man who is an outstanding personality, an original thinker has given a slashing criticism on our culture and civilisation, because of our politics and sociology.

MR. M. SIVATHANU PILLAI: May I know whether Mr. Wells was in favour of child marriage?

MR. K. R. RAMASUBBA SASTRI: As I said Mr. Wells said that the civilisation of India is a cheap imitation of the west.

MR. E. SUBRAMONIA AIYAR: Is the member aware that the Mandal in the Sind enjoins that women should remain unmarried?

MR. K. R. RAMASUBBA SASTRI: I am not aware of that. Anyhow, as I said before, Mr. H. G. Wells made that slashing observation because he had not the opportunity of meeting persons like the mystic Arabinda ghose. Ramana Rishi or the great swami of the Puri Matam, who is well versed in Sanskrit and English and who is able to defend Hindu theology, who thinks that spirituality is the only thing worth living and fighting for in this world and who teaches that the emotional things in this life are mere evanescent and useless ones. As the feeling of the House seems to be that I shall not be allowed to speak about theology and as I think that they feel that it is an offence to speak of God, I would simply confine myself to the motion under discussion. But so far as Hindu theology is concerned there is no superiority or inferiority complex between men and women. When it is said that this view of the orthodox Brahmin is an obnoxious one..... .....

MR. M. SIVATHANU PILLAI: May I know from the honourable member whether, from the point of view of Ayurveda, child marriage is healthy?

MR. K. R. RAMASUBBA SASTRI: I perfectly agree with the member that not only from the Ayurvedic point of view, but from every point of view, the consummation of the marriage, please note the word "*consummation*," before the age of 15 for the girl and 20 for the boy, is prohibited. I would say that in all communities it is desirable, no doubt, from physical point of view, that the marriage is consummated after age of 16 for the girl and 24 for the boy. But we are not concerned with the physical aspect alone. There is the mental or spiritual aspect of the question. Suppose if you have a boil in your back and you go

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to the doctor. The doctor advises you that it may be cured by some external application. If you do that alone the consequence will be that the same disease may spring up again later on. What is needed is to apply a remedy to cure the defects in the system inside. It is not enough if we care for the exterior alone. Ethics is only the manifestation of the inner mentalities of man. If a woman has married before the age of 16, we have to see the mentality of the girl. I admit that so far as health is concerned, the consummation of the marriage should be at the age of 16 for a girl and 24 for a boy Here it is that we are mainly concerned with the question of spirituality. The object must be to see that the minds of the boy and the girl are pure. The girl must not have looked into the face of any other gentleman. Unfortunately, all religions seem to think that the mentality of the boy, even though he errs might be excused, but the lo of the girl can unfortunately, be never excused. I say that the ideal of asceticism for the male and chastity for the female are the main facts to be considered.

MR. M. L. JANARDHANAN PILLAI: Sir, I appeal to this House to consider whether this kind of reasoning practically helps us to get through clause, When I say this, I think, I am voicing the feeling of this House. I therefore request that the honourable member may be put in order by the Chair asking him to confine his remarks to the question in hand.

MR. K. R. RAMASUBBA SASTRI: Sir, I have a right to address.

DEPUTY PRESIDENT: He raised a point of order.

MR. K. R. RAMASUBBA SASTRI: Sir, I thought he was going to put a question for me to answer.

DEPUTY PRESIDENT: Yes, you may continue your speech and confine yourself with the mode of cognizance of the offence by the court.

MR. K. R. RAMASUBBA SASTRI: I would not have yielded my place but I thought he wanted to ask a question.

DEPUTY PRESIDENT: It is a point of order and it can be raised at any time.

MR. K. R. RAMASUBBA SASTRI: Then, am I out of order when I say that the mentality of the male is asceticism and that of the female is chastity. (*Laughter*)

DEPUTY PRESIDENT: Perfectly out of order, so far as this motion is concern d.

MR. K. R. RAMASUBBA SASTRI: Then what is the use of marriage? (*Laughter*). Why should you go into marriage at all? If the child is to be child of the State, or for that matter, if the responsibility of the parent is taken away, then, what is the difficulty? I ask why you should saddle us with a responsibility? Why should the fa her be punished because the boy goes astray?

DEPUTY PRESIDENT: I repeatedly pointed out to the member that the only question for consideration and decision under this motion is how the court shall take cognizance of his matter. You shall not deal with any other matter. I have been watching the progress of the member. Please confine your observations to the question before the House otherwise, I shall be put to the necessity of asking the member to stop his speech.

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MR. K. R. RAMASUBBA SASTRI: All that I can submit is that we are entirely at cross purpose so far as this Bill is concerned. I am not concerned with this Bill. I have passed out of the age of responsibility as a parent. I am only a grand parent and I am not concerned with the child marriage. But, I am here, to focus the attention of this House to the fact that, after all, child marriage depends upon a few considerations which are more spiritual in point of view and that spiritual aspect has to be taken into consideration.

DEPUTY PRESIDENT: The question of the relationship between sexes is not now under discussion. You may confine yourself to the mode in which courts may take cognizance of the offence under this Act.

MR. K. R. RAMASUBBA SASTRI: About the mode of complaint; then who is the party injured with reference to the child marriage? As my friend Mr. E. Subramonia Iyer points out, is it the parent, or is it any outside member or neighbour, who perhaps takes a malicious interest in saying that the marriage shall not be celebrated, or is it the Government that should put in the complaint? Why not the Government take charge of the whole affair and avoid prosecution. In order that there might be healthy relationship between the sexes, the whole responsibility of complaint should be with the Government and with nobody else. My proposition is that the ideal of the male is asceticism and that of the female is chastity. The female is more concerned with becoming a mother. In fact, nature seems to have created a difference in the functions between the male and the female. The female should be worshipped as a divine mother. No progress would be made at all if there were no sexes. If you assume the existence of a God, it means, in creating two sexes, he meant there should be a difference in the functions they have to perform.

MR. M. SIVATHANU PILLAI: May I know whether a complaint by a private party be placed before the court or whether the Magistrate himself take cognizance of the complaint.

MR. K. R RAMASUBBA SASTRI: My honest conviction is that, so far as child marriage is concerned, the StateShould launch the complaint. It is not for the community to launch the prosecution. If the mentality of the community is in favour of child marriage and if you think that the Bill should be educative of that community by saying that the evil should be purged, then you should act only on the complaint of the members of that community. That is the position I contend for. I say all these, because it is highly necessary that in these matters vexatious complaints should not be brought in. After all, marriage once performed becomes an accomplished fact and a permanent one too; then what is the use of taking a man to the court after it is over? So, when once it is performed, it is the State that is offended. You cannot undo what is done. Unless the child repudiates, unless she says, "no, I cannot live with this man" what I say is, that the complaint should be made only by Government or by members of the community. It is for that purpose that I am seriously drawing the attention of this House to the fact that marriage should be considered in the light of the spiritual aspect.

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MR. C. JEBAMONY NADAR: Supposing that you make a provision that only Brahmin Magistrates should try such cases?

MR. K. R. RAMASUBBA SASTRI: No, I have sufficient faith in other magistrates as well. In fact, the Brahmin Magistrate would not mete out justice to Brahmins out of fear that he would be accused of acting under communal bias.

Now, what does it matter even if one is convicted, conviction carries no stigma and great men in British India have lots of convictions behind them and now there is one thing, after all, which I should bring to the notice of this House. Is western civilisation after all, such a very very desirable object under the present conditions that we should rush in to adopt it ignoring our ancient culture?

MR. M. SIVATHANU PILLAI: May I know why the members of the Brahmin community alone are considered competent to prefer a complaint?

MR. K. R. RAMASUBBA SASTRI: What I said is that if a child marriage is performed, the members of that community should come forward and prefer a complaint. I am not concerned with the question of Brahmin or non-Brahmin, I simply brought in the word Brahmin, because, unfortunately, this community is affected most.

MR. K. R. RAMASUBBA SASTRI: I have great respect for Mr. E. Subramonia Aiyar, and I accept the correctness of his views in this matter.

MR. M. SIVATHANU PILLAI: Is it the honourable member's view that because Mr. E. Subramonia Aiyar has table the amendment, it must be correct?

MR. K. R. RAMASUBBA SASTRI: Sir, in courts, even when we are arguing elementary principles of law we are asked to quote authorities and we say the "Privy Council has held, the Allahabad High Court has held, and so on. Therefore, to decide whether a particular view is correct or not there is absolutely no harm in quoting authorities and I rely on the authority of my learned friend Mr. E. Subramonia Aiyar. I believe in his wisdom and legal acumen. I defer to him in those matters. If my friend Mr. Sivathanu Pillai does not agree with me in this matter also, it is quite open to him not to rely on the authority of Mr. E. Subramonia Aiyar.

As I was submitting, Sir, after all western culture is not very desirable from the ethical point of view.

DEPUTY PRESIDENT: How is your reference to western culture quite relevant now? Please make it more explicit

MR. K. R RAMASUBBA SASTRI; It is relevant because this Bill has been copied from British India where they have followed western culture. It is all the work of the missionaries who have always been fighting the orthodox Hindus wherever possible, the missionaries have been at the bottom of the whole movement.

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MR. C. JEBAMONY NADAR: I question that statement; I challenge it.

MR. K. R. RAMASUBBA SASTRI: I submit, Sir, I am not saying anything against the missionaries. They have done good work in India. They honestly believe that child marriage and several other Hindu institutions are evils; and naturally they do their best to eradicate them. Therefore it is western culture that is responsible for the British Indian Act. Am I wrong in saying that? I believe I am not.

Sir, there cannot be a more wretched condition of homelife than what you find in the west. Homelife has absolutely disappeared there. On the other hand, how many happy homes are there in our country?

DEPUTY PRESIDENT: The honourable member is attacking the principle of the Bill which has been accepted by the House long ago.

MR. K. R. RAMASUBBA SASTRI: Not at all, Sir; I quite agree that so far as actual, physical marriage, consummation, is concerned, the minimum age of the girl should be 16 and that of the boy, 24 or 25. All that I want is that a single provision should be introduced to the effect that a sort of engagement register or betrothal register should be kept wherein our sacramental engagements would be registered so that the boy and girl would feel that each one lives for the other and participate in Dharma as ordained in our Hindu Theology.

DEPUTY PRESIDENT: You have tabled a separate motion for that; you can reserve your remarks on Hindu Theology to that.

MR. K. R. RAMASUBBA SASTRI: Yes, Sir. I was just hinting; that is all.

What I am submitting is that at least in our marriage we should not imitate the west. In the matter of giving more and more freedom to ladies, I yield to none; I am second to none in my respect for the other sex. In my opinion, if I am allowed to say that, they are undoubtedly the better and decidedly the major halves so far as our home economy is concerned. According to Hindu Theology, at 16 kalas, one portion goes to God and one portion goes to matter; the other seven portions are divided between male and female. The balance that turns the relative advantage in favour of male or female is the control of the purse. If the male has the control of the purse, the female is generally starved, and if the female has the control of the purse the male is starved.

MR. M. SIVATHANU PILLAI: Is there no time limit even for the debates on legislative enactments?

DEPUTY PRESIDENT: The chair has been trying to enforce that rule when necessary.

Mr. Sastry, you may reserve your remarks on Hindu theology to amendment No. 21 or 22.

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MR. K. R. RAMASUBBA SASTRI: After all, it seems to be a question of superiority or inferiority complex so far as the male and female are concerned. The relationship between the sexes is confined to that of parent and child, brother and sister and husband and wife. These three should not be confused. In order that I am not misunderstood, I would read the definition of personality if I am permitted to do so.

DEPUTY PRESIDENT: No.

MR. K. R. RAMASUBBA SASTRI: Then I do no want to say anything further.

My submission is that in a serious matter like marriage there should not be any complaint from any one who is not a member of the community to which the parties to the marriage belong, if the State refuses to take upon itself the responsibility of launching these prosecutions.

A word about the status of the unfortunate children, the offsprings of marriages. In the interests of these children, it is highly necessary that the relationship between the male and the female parent should be harmonious; such relationship should not be disturbed by mere physical considerations. We all owe a sacred duty.....

DEPUTY PRESIDENT: You need not touch upon that point now.

MR. K. R. RAMASUBBA SASTRI: I submit in conclusion, Sir, that I would much rather be prosecuted by the State if I am considered a senile old man who is talking in support of sacramental marriages.

MR. M. SIVATHANU PILLAI: I move that the question be now put.

The motion was put to vote and carried.

SRIMATI T. NARAYANI AMMA: Sir, the main contention of the oppositionists seems to be that it would create a tendency for black mailing by personal enemies. I do not think that there is any justification for such forebodings. As the honourable member Mr. P. S. Nilakanta Iyer said, every body has his avocation to follow. As I have already stated it was because the original Sarda Act was actually found to be a dead letter that the amendment Bill was brought forward and passed by the Indian Assembly after mature deliberations. After the passing of Mr. B. Das's Bill we get several instances of child marriages being brought to light and the offenders being brought to book.

The Hon'ble member Mr. E. Subramonia Aiyar for whom I have the greatest respect, said that, in Travancore we do not have child marriages to such an acute extent. According to the Census Report, the number of girls married between the ages of 5 and 10, is 8 per thousand, and that married between 10 and 15 is 80 per 1,000. Though the number is small when compared to British India, it is bad enough to merit notice. The Census Commissioner has rightly characterised it as a *serious social evil*. I would again emphasise that child marriage should be made an impossibility in Travancore; that is the object of the Bill, and since this amendment helps that principal object of the Bill, it deserves the support of the House.

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[Srimati T. Narayani Amma.]

The honourable member Mr. E. Subramonia Aiyar wanted the mover of the Bill to give an explanation as to whether the courts could proceed on any information laid before them. My explanation is that no court would straightaway, on receipt of information, go ahead with the prosecution; they would make the necessary enquiries and satisfy themselves that the information is reliable.

There was a dispute here as to what the object of this Bill is. The object of the Bill, as I have repeatedly said is to restrain child marriages in the State and thereby, by the inevitability of gradualness to put a stop to child marriages and make this serious social-evil of child marriages an impossibility in this State.

With regard to the period fixed, six months is too short a period; If the offenders are able to hide the offence for six months they can easily escape the provisions of the law. Hence it is that the period has been extended to one year.

With regard to the charge of slavish mentality levelled against the mover of the Bill, I might say that it is always advisable to emulate what ever that is good in others, whether it be in British India or Timbuctoo. The Honourable Member Mr. Ramasubba Sastry asks us to look to our Sister States of Cochin and Mysore where the Bill has been thrown out. May I ask whether Travancore has not justly earned the reputation of being one of the foremost States in the whole of India? I also ask him whether Travancore is not forging ahead in all directions and whether she did not take the lead in granting temple entry and whether it is not in Travancore among all other states that the Bicameral legislature was first introduced? And I may submit that, in the matter of child marriage alone, Travancore lags far behind Baroda, Gwalior, Nawanagar and some other States. When Mr. B. Das' Bill was being discussed in Indian Assembly, the following telegram was sent to the Assembly:—

The Text of the Telegram.

"As humble practical thanks giving for noble support by Government, Congress and other members to Das's Bill to stiffen sarda Act; I on behalf of our daughters and sons, offer Rs. 5000 for erecting a column on Assembly grounds for inscribing in gold names of benevolent supporters and in black of opposers for our progeny to know our saviours and destroyers. I appeal all to stop early marriage which brings sickness, weakness, tuberculosis, early death and emaciates the nation. Cheque of Rs 1000 sent to Honourable Home Member balance to follow on acceptance of proposal."

Sir, the telegram speaks for itself. The position is more or less the same in Travancore also.

I hope honourable members will appreciate the usefulness of the amendment and vote for it.

The amendment was put to vote and carried.

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SRIMATI T. NARYAANI AMMA: I demand a poll.

A poll was accordingly taken with the following results:—

AYES—14.

1 Mr. N. Narayana Kurup	9 Mr. Kainikkara M. Padmanabha Pillai
2 „ T. T. Kesavan Sastri	10 „ P. Narayana Pillai
3 Sry. Devaki Antharjanam	11 „ S. Narayana Pillai
4 „ T. Narayani Amma	12 „ John Joseph
5 Mr. E. E. Pandarathil	13 „ Kaviyur K. Kochukunju
6 „ P. Sivarama Pillai	14 „ C. Jebamony Nadar
7 „ M. L. Janardhana Pillai	
8 „ M. Sivathanu Pillai	

NOES—7

1 Mr. P. S. Nilakanta Aiyar	5 Mr. Joseph Vithayathil
2 „ K. R. Ramasubba Sastri	6 „ E. Subramoina Aiyar
3 „ V. Chandamiah Sahib	7 „ Raman Nambooripad
4 „ N. V. Joseph	

NEUTRALS—8.

1 Mr. M. K. Nilakanta Aiyar	5 Mr. Puthupally S. Krishna Pillai
2 „ M. Govinda Pillai	6 „ G. B. E. Truscott
3 Dr. G. D. Nokes	7 „ A. Gopala Menon
4 Mr. G. S. Abdul Kareem	8 „ M. Ramachandra Rao

The amendment was declared carried 14 voting for 7 voting against and 8 remaining neutral.

MR. E. SUBRAMONIA AIYAR: Sir, I proceed to move the amendment standing in my name with these prefatory words. The blood out of that amendment is practically drawn out by the passing of the previous amendment. Now that the previous amendment has been accepted, the consequence is that a Magistrate of the first class may take cognizance of an offence under this bill either upon a complaint or upon information laid. What is the sort of information or the form of information subsequent experience will tell us. I have been watching the proceedings in the British Indian Assembly. There the discussion centred more about Dharma Sastras and the social reformers. With all respect to the composition of that Assembly I must say that very little attention has been paid to words of the statute and the necessary implications thereof. With great respect to those great men who have taken part in that legislature it is my honest view I am prepared to support it with all the arguments which I can command that sufficient attention had not been paid to the drafting of that legislation. I know that it received the support, sometimes silent, sometimes active, of a Government who did not want to join issue with a legislature composed of people who are attempting to wreck the very constitution. That is not the state of things prevailing in Travancore. God forbid that we shall be faced with such a situation. Apart from the principle

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[Mr. E. Subramonia Aiyar.]

of the bill, what I would request the Honourable Members of the House is not to be carried away by feelings of sentiment when we are dealing with the actual words of the Bill. Whatever be the consequences of the doubtful phrase "information laid" and whatever further consequences we are going to have in courts of law, we find, because the amendment has been accepted by the House, that two courses are open. A Magistrate can take cognizance of a case either upon a complaint or upon information laid. I will not use the words "information received". If the Section was in this form that a court shall take cognizance of a case only upon information laid or upon information received, I would have most gladly withdrawn my amendment because it will not serve any purpose whatsoever. But, fortunately or unfortunately, still there are two courses open. So my amendment still stands and therefore I propose to move it. For in matters of this description what little foothold one can secure may be of permanent benefit to persons who come after us and who have to bear the brunt of this legislation.

DEPUTY PRESIDENT: Does not the previous amendment which has been carried cut at the root of your amendment? Do you still propose to move it?

MR. E. SUBRAMONIA AIYER: No, it does not cut at the root of my amendment. If the prosecution is to be started upon a complaint then my amendment says that it should be in this particular form. No doubt, the discussion in this House with respect to the previous amendment turned upon this point, namely, that a Magistrate upon information received or laid may take cognisance of the case and go on with the complaint. Well, hereafter let all the prosecutions under this Act be initiated and heard as it were by a Magistrate of the first class, but let there be some security. If the view of the members of this House is that that is a necessary provision let there at least be uniformity. Why should we introduce this "complaint" if there is little distinction between complaint and information laid? If information laid is more satisfactory why should we have the fetish of a complaint? Now that we have allowed the two things to remain—certainly the House is wiser than myself when the House allowed the previous amendment to be passed that a court may take cognizance of an offence either on a complaint or on informa ion laid, certainly I am to bow to the decision and think that in the view of this House there is a vital difference between complaint and information laid If I say that there is absolutely no distinction between the two after the House has accepted that amendment, as Swift has said that he was unable to make a distinction between..... .... and....., if I say that there is no distinction between complaint and information laid, now that the house has accepted the amendment, I will be stultifying myself.

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MR. PUTHUPALLY S. KRISHNA PILLAI: Sir, I rise to a point of order. I suppose my friend, Mr. E. Subramonia Aiyar is moving amendment No. 10. His amendment is that after the words "save upon complaint made" and before the words "within six months" certain words should be inserted. But these words do not exist now. If it is permissible he must amend his amendment.

DEPUTY PRESIDENT: I suppose, Mr. Subramonia Aiyar may suitably modify his amendment to fit with the section as now amended.

MR. PUTHUPALLY S. KRISHNA PILLAI: Then the question arises whether a clause which has been accepted by this House, can immediately be amended by this House, because when Sry. Narayani Amma's motion was adopted, it stands as clause 8 now, and the question is whether after the adoption of her amendment it is open to a member to amend the clause. In any case this amendment cannot be permitted to be discussed because the words mentioned there do not exist in the clause. If there is any other amendment before the House that may be permitted to be discussed if it is permissible in law.

MR. E. SUBRAMONIA AIYER: Sir, it was only an amendment to clause 8 which was accepted by this House. The clause 8 is still there.

MR. PUTHUPALLY S. KRISHNA PILLAI: Sir, my point is that the words "save upon complaint made" and within six months" cannot be found in the amended clause. Suppose the amendment of Mr. Subramonia Aiyar is passed the House will have to go about searching for those words and the Secretary will be put to much trouble. So this amendment cannot be discussed.

DEPUTY PRESIDENT: As the words of your amendment stand at present, your amendment cannot fit in with the clause. Do you propose to modify your amendment?

MR. E. SURRAMONIA AIYAR: I shall explain how it can come in and fit in. The original clause was that no court shall take cognizance of any offence under this Act save upon complaint made within 6 months of the solemnisation of the marriage in respect of which the offence is alleged to have been committed. Practically the amendment would make the section read that a court may take cognizance of a case upon a complaint or on information laid, etc., etc., So far as my amendment is concerned it will fit in with that Section even in the new form provided I get the permission of the Chair to strike away the word "save."

MR. PUTHUPALLY S. KRISHNA PILLAI: What about the words "six months"? They will also have to be struck away. Sir, it is a substantive motion and no further alteration is possible. When the question is put and if the House is of the opinion that the amendment should be passed, where will we go for the words "save upon complaint

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[Mr. Puthupally S. Krishna Pillai.]

made" and 'within six months"? Of course, there is the word "complaint" there. But the words "within six months" do not occur any where.

MR. M. SIVATHANU PILLAI: Sir, the motions of Mr. E. Subramonia Aiyar and Mr. P. S. Nilakanta Aiyar ought to have been moved while the motion of Sry. Narayani Amma was being considered by the House and all these three motions ought to have been put to the vote of the House one after the other. Then the whole difficulty would have been obviated. But now that the motion of Sry Narayani Amma has been passed, Mr. Subramonia Aiyar has no right to have this motion, as the House has come to a decision on the previous motion.

According to my view, Sir, Mr. Subramonia Aiyer's amendment cannot be moved now nor is Mr. Nilakanta Aiyar entitled to move his amendment.

MR. E. SUBRAMONIA AIYAR: As submitted already the words which I want to introduce in the new clause 8 are "by not less than five members of the community to which the parties to the marriage belong". This insertion is to come after the expression "complaint made". No doubt in the prior bill there were the words "save upon complaint made" that is not the material portion. In the section newly put in, the words "complaint made" are there. After that, I want to add the expression "by not less than five members of the community to which the parties to the marriage belong". Therefore it is I said, when I opened the discussion, the words. "save" and "six months" be taken away. I grant that I am not eligible to move my amendment No. 10 in the newly inserted clause, provided what is passed by the House is an identical one. I give importance to the word "complaint" in the new clause passed by the House. So, my submission is that my amendment is not over-thrown by the prior amendment in any form what so ever. As for Mr. Nilakanta Aiyar's amendment, he will take care of it himself. So far as my amendment goes, Mr. Sivathanu Pillai says that in so far as this amendment was not put forward first it could not be moved. I am unable to agree with him there. According to my amendment in the list, the expressions "save upon complaint made" and "within six months" only indicate the place where the words I newly want to put in are to be tacked on. So, there is absolutely no necessity to change the substance of the amendment. If the few words I have moved are also put in the section would be free from defect.

MR. PUTHUPALLI S. KRISHNA PILLAI: Between the words "save upon complaint made" and "within six months" there are a large number of words to be put in. Where are those to be located, in the new clause passed by the House. So, my point is that if Mr. Subramonia Iyer wants to make a new amendment to the clause, he is estopped from doing so, because clause 8 has been approved by the House.

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DEPUTY PRESIDENT: My idea of Mr. Subramonia Iyer's point is to amend the new section passed by the House so as to read like this.

"The court may take cognisance of an offence under this Act either upon complaint *made by not less than five members of the community to which the parties to the marriage belong* or information laid before it within one year from the date on which the offence is alleged to have been committed."

MR. PUTHUPALLI S. KRISHNA PILLAI: That is to say, the words must be changed. But where is the scope for it in the new section passed by the House.

DEPUTY PRESIDENT: He lays emphasis on the words "complaint made" in the section newly approved by the House.

MR. E. SUBRAMONIA AIYAR: So I beg leave to make the amendment in this modified form.

"The words by not less than five members of the community to which the parties to the marriage belong, be inserted after the words 'complaints made' and "before or information laid" in the new clause.

MR. M. SIVATHANU PILLAI: Am I to take it that the qualification that is proposed now is only in respect of "complaint" and not in respect of "information".

MR. E. SUBRAMONIA AIYAR: Yes, Sir.

MR. PUTHUPALLI S. KRISHNA PILLAI: Standing order No. 23 reads thus:

"A motion must not raise a question substantially identical with one on which the Assembly has given a decision in the same session".

Here a motion was made that clause 8 shall be substituted for the existing clause and that was adopted by the House after a full discussion. Now if Mr. Subramonia Iyer's amendment is allowed to be put in, that will be opening a discussion of the same motion adopted by the House. We cannot go back like that, at any rate not at this session.

Again there are other provisions to this section thus:

"Any motion for the amendment of a Bill which has been re-committed to a select Committee.

Any motion for the amendment of a Bill made after the return of the Bill by the Dewan for re-consideration by the Assembly.

Any motion for the amendment of a Bill which is consequential on, or designed merely to alter the drafting of, another amendment which has been carried."

So that, in respect of the amendment which is sought to be moved if it falls within any of the provisions just now passed, the Chair can allow it.

MR. E. SUBRAMONIA AIYAR: I may be permitted to add by way of explanation, Sir. I do not propose an amendment to an amendment. My amendment is not with reference to information laid or with reference to time being fixed for it. There was no discussion upon the word "complaint" in the Section. It is only on complaint, the whole section rests. If there was a discussion on that and the clause had been voted upon, I have nothing to say. We must only get at the substance of the clause. If it is a technical matter, that should not

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[Mr. E. Subramonia Aiyar.]

trouble us much. We are not concerned with forms. Rules are introduced only for the purpose of clarifying matters and preventing discussion on really unnecessary matters. Every rule has a purpose to serve. Let us now see what the real amendment is. Every procedure is initiated by means of complaint. It is the word 'complaint' I want to define. There was no discussion on that when Srimati Narayani Amma's amendment was being discussed. The discussion proceeded on the assumption that there should be a complaint. That point never came up for comment, therefore, I think I am perfectly in order under Standing Orders to move my amendment in the modified form.

MR. M. SIVATHANU PILLAI: Sir, what I wish to point out is this. What is the amendment that has been carried by the House? The amendment is this. "Substitute the following for clause 8". I take it that clause 8 means, clause 8 as a whole Now that was the motion before the House? Substitute clause 8 as a whole. So clause 8 as substituted has been passed. It is only in the form of an amendment that a c ause can be modified. Clause 8 as in the Bill should be removed and in its place clause 8 as amended should be substituted. I submit that the amendments of Mr. E. Subramonia Iyer and Mr. Nilakanta Iyer should have been moved when the amendment to clause 8 was discussed. Now, clause 8 as a whole has been taken away and the present clause has been substituted. So there is no scope of making any more amendments to clause 8. It will be a mere repetition. There will be no end to it. The whole clause has been removed and another clause has been substiuted. It has been considered as a whole. It is not now open to any member to amend it. These amendments should have in propriety, been moved when clause 8 was being considered so that the House may have voted upon the amendments one after another. Now that the House has already decided upon this motion, it is not open to any member to reopen it. There is no possibility of any member reopening it even with the permission of the Chair because it will be overdoing the same thing. Clause 8 has been considered as a whole and resolved upon. Whether the modification will fit in with the clause or not is not the question as contended by Mr. E. Subramania Iyer. It may be argued that the House adopted the clause without any qualification. When the House adopted the amendment of Srimati Narayani Amma it shows that it was not in a mood to adopt any qualification. Now, why should Mr. E. Subramonia Iyer say that it was not discussed?

MR. K. R. RAMASUBBA SASTRI: With due deiference to the argument advanced by the previous speaker. I would say that it was specifically understood that this amendment would be moved as a separate amendment. If the learned Legal Remembrancer wanted to take any objection he ought to have taken it at that time. He gave us to understand that this amendment would be considered after the other amendment. Again, there seems to be no consideration between the amendment already passed by the House and the present amendment

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proposed by Mr. E. Subramonia Iyer. Mr. Subramonia Iyer's amendment is to insert the words "by not less than 5 members of the community to which the parties to the marriage belong". I do not see anything wrong in principle or substance in allowing the amendment to be moved as a separate one especially when it was definitely given to understand by the Legal Rememoraucer that this amendment will be allowed to be considered later on. This is a very important amendment. The iniating proceedings with reference to offences under this section has to be qualified very seriously so that the rights of the citizens or at least the community that would be affected should be protected. I think it is unfair that this amendment should be objected on technical grounds. Even if there is some technical difficulty, I would urge the consideration of the Chair to overrule such technicalities and say that the complaint shall be launched and the proceedings shall be started only on the complaint made by five members of the community to which the parties belong. If it was suspected that we could not move this amendment we would have talked when the previous amendment was under discussion. On the other hand when the previous amendment was discussed we were told that an opportunity will be given to speak on this amendment. Why was it said like that then? Is it fair to make a suggestion like that and afterwards throttle us by saying "No, you shall not speak on the same point." Was the Legal Remembrancer justified in saying that this amendment may be referred to another occasion when he said the right to speak on the amendment will be given?

MR. PUTHUPALLY S. KRISHNA PILLAI: On a point of personal explanation. The Legal Remembrancer did not say anything of that sort. If any honourable member was under the impression that the Legal Remembrancer said that this motion may be admitted or that motion may not be admitted or that they may be allowed or may not be allowed to speak on some motion, they must be wrong. I am perfectly certain that I did not give any such undertaking and if honourable members have understood something different from what they, ought to have understood, I am not to be blamed and any blame that is attempted to be laid on me is not in order. I have to bring to the notice of the House that it is my duty to point out whether a particular motion is in order or not, what will be its effect if moved and all that. It is one of my legitimate duties. Standing orders and rules are available to all the members as much as it is available to me. Here was an amendment that clause 8 shall be substituted by an amendment. The question was put to the House and passed. Immediatetly to turn round and say that it was not what was meant, is not correct. We have now completely accepted the amendment. Now we are, as it were, putting a lever and trying to open it so that new words may be put into it. Is the Legal Remembrancer wrong? In pointing it out I am placing these facts for the consideration of the Chair and pointing out that no fault should be attributed to the Legal Remembrancer?

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MR. K. R. RAMASUBBA SASTRI: I was only saying that he was very modest. His word is law in the Assembly. When he says that such and such motion can be moved, we take it at its face value. When he advises the House he has got the same value as words from the Chair.

DEPUTY PRESIDENT: The point of order is whether the amendment of Mr. E. Subramonia Iyer on the clause as amended by Srimati Narayani Amma and carried should be allowed to be moved. In considering whether this amendment can be allowed, I am governed by the provisions of Standing Order Nos. 23 and 25. Standing Order No. 23 lays down that a motion cannot be raised on a substantially identical one on which the Assembly has already given its decision in the same session. Now, it has to be considered whether the motion that is proposed by Mr. E. Subramonia Iyer raises a question substantially identical with the one on which the Assembly has given a decision in the matter of Srimati Narayani Amma. For my part, I must rule that the motion of Mr. E. Subramonia Iyer does not raise a question substantially identical as recorded on the motion of Srimati Narayani Amma.

The House adjowned *sine die* at 4·55 P. M.

A. GUNAMONI,
Secretary Sri Mulam Assembly.

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